

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING
May 10, 2011
Start: 9:38am - End: 2:46pm

Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson
Nicole Sorg - Vice Chairperson
Jeffery L. Hinkle - NCPC
Michael G. Turnbull - Architect
Greg Selfridge - Zoning Commission
Lloyd Jordan - Mayoral Appointee
Clifford Moy - Secretary
Beverley Bailey - Office of Zoning
Mary Nagelhout - Office of the Attorney General
John Nyarku - Office of Zoning

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A.M. SESSION

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P.M. Session

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1 P R O C E E D I N G S

2 VICE CHAIRPERSON SORG: Good morning
3 ladies and gentlemen. This is the May 10th Public
4 Hearing of the Board of Zoning Adjustments for
5 the District of Columbia. My name is Nicole
6 Sorg, Vice Chairperson. Joining me today is
7 Representative of the NCPC Jeffrey Hinkle,
8 Representing the Zoning Commission to my far left
9 Mr. Selfridge and to my near left Mayoral
10 Appointee Lloyd Jordan. Copies of today's meeting
11 agenda are available to you and are located to my
12 left in the wall bin near the door. Please be
13 advised this proceeding is being recorded by a
14 court reporter and is also being webcast live.
15 Accordingly we must ask that you refrain from any
16 disturbing noises or actions in the hearing room.
17 When presenting information to the Board please
18 turn-on your microphone and speak into it,
19 stating your name and home address. When you are
20 finished speaking please turn-off your microphone
21 so that your microphone is no longer picking up
22 sounds or background noise. All persons planning

1 to testify either in support or in opposition are
2 to fill out two witness cards these cards are
3 located to my left on the table near the door and
4 are also on witness tables. Upon coming forward
5 to speak to the Board please give both cards to
6 the court reporter sitting to my right. The order
7 of procedures for special exceptions and
8 variances are is: 1. Statement of the Applicant
9 and Applicant's Witnesses. 2. Parties and persons
10 in support. 3. Parties and persons in opposition.
11 4. Government Reports including Office of
12 Planning and Department of Transportation, Office
13 of the State Superintendent for Education and the
14 Department of Public Works. 5. Reports from the
15 ANC. 6. Rebuttals and closing statements of the
16 Applicant. Pursuant to Section 3117.4 and 3117.5
17 the following time constraints will be
18 maintained. The Applicant/Appellant persons and
19 parties except an ANC in support including their
20 witnesses will be given 60 minutes collectively.
21 The Apelles persons and parties except an ANC in
22 opposition including witnesses will be given 60

1 minutes collectively. Individuals will be given
2 3 minutes and associations or organizations will
3 be given 5. These time restrictions do not
4 include cross examinations or questions from the
5 Board. Cross examination of witnesses is
6 permitted by a party or an Applicant in the ANC
7 within which the property is located is
8 automatically a party in a special exception or
9 variance case. Nothing prohibits the Board from
10 placing reasonable restrictions on cross
11 examination including time limitations or
12 limitation on the scope of cross examination.
13 The record will be closed at the conclusion of
14 each case except for any materials specifically
15 requested by the Board. The Board and the Staff
16 will specify at the end of each hearing exactly
17 what is expected and the date when the material
18 must submitted to the Office of Zoning. After the
19 record is closed no other information will be
20 accepted by the Board. The Sunshine Act requires
21 that a public hearing on each case be held in the
22 open before the public. Pursuant to Section 405B

1 and 406 of the Open Meeting Amendment Act of
2 2010, the Board may consistent with its rules and
3 procedures and the Open Meeting Amendment Act
4 enter into closed meeting or closed emergency
5 meeting on a case for purposes of seeking legal
6 counsel in a case per Section 405B4 and or
7 deliberating on a case pursuant to Section 405B-
8 13 of the law but only after providing the
9 necessary public notice and taking a roll call
10 vote. The decision of the Board in these
11 contested cases must be based exclusively on
12 public record. To avoid any appearance to the
13 contrary the Board requests that persons present
14 not engage the members of the Board in
15 conversation. Please turn off all beepers and
16 cell phones at this time as to not disturb these
17 proceedings. Any individuals wishing to testify
18 today please rise to take the oath. Mr.
19 Secretary will you please administer the oath.

20 MR. MOY: Good morning. Do you solemnly
21 swear or affirm that the testimony you're about
22 to present in this preceding is the truth, the

1 whole truth and nothing but the truth? Ladies
2 and Gentleman you may consider yourself under
3 oath.

4 CHAIRPERSON SORG: Thank you Mr.
5 Secretary. The Board will now consider any
6 preliminary matters; preliminary matters relate
7 to whether a case should or will be heard today
8 such as a request for postponement, continuance
9 or withdrawal or whether proper or adequate
10 notice of a hearing was given. If you are not
11 prepared to go forward today or you believe that
12 the Board should not proceed, now is the time to
13 raise such a matter. Mr. Secretary, do we have
14 any preliminary matters?

15 MR. MOY: Madam Chair to my knowledge
16 there are no preliminary matters this morning.

17 CHAIRPERSON SORG: Thank you very much
18 then let's call the first case.

19 **Application No. 18204**

20 MR. MOY: Good morning Madam Chairperson,
21 Members of the Board. The first application for
22 Board Action is Application No. 18204. This is

1 the application of M. Sikder, pursuant to 11 DCMR
2 3103.2 for a variance from the lot area and lot
3 width requirement under Section 401 and a
4 variance from the side yard requirements under
5 Section 405 to allow the construction of a new
6 one family detached dwelling in the R-2 District,
7 this is at premises 5815 Foote Street, N.E.
8 (Square 2559, Lot 19) (*agenda says Square 5259*)?
9

10 CHAIRPERSON SORG: Thank you Mr. Moy, I
11 see that Mr. Sikder has joined us at the witness
12 tables. Anyone else wishing to testify in this
13 case can come forward now and we will go ahead
14 and get started. Can the Applicant state your
15 name and home address for the record please?

16 MR. SIKDER: Good morning my name is
17 Mohammed Sikder and I'm the owner of the
18 property.

19 CHAIRPERSON SORG: Thank you Mr. Sikder.
20 Why don't you go ahead and present your case
21 when you're ready.

22 MR. SIKDER: Good morning Madam Chair and

1 Board Members. The property at 5815 Foote Street
2 is in R-2 Zone District and does not meet the
3 criteria to build a house as a matter of right.
4 Therefore we need a BZA variance from minimum lot
5 area, lot width and side yard under Section 401,
6 405 in order to build a single family house.
7 Currently this property has 2500 sq. ft. and
8 needs 4000 sq feet; it has only 25 feet and
9 across 40 feet. Lot occupancy is 32% and we have
10 32% of the required 40%. The rear yard we have
11 45 feet and required 20 feet. Side yard require
12 8 feet and we have 10 feet on both sides. We
13 also are providing parking spaces. This property
14 exhibits specific uniqueness with respect to
15 exceptionally narrowness, shallowness, shape,
16 topographical or other extraordinary situations.
17 Because the (inaudible) we cannot indulge this
18 property on both sides as a result without the
19 variance we cannot build any house in this
20 property and it also exhibits extraordinary and
21 exceptional situations. It possesses a practical
22 difficulty which is unnecessarily bothersome to

1 us. This (inaudible) can be granted without
2 substantial detriment to the public good and
3 without substantial (inaudible) integrity of the
4 Zoning Regulations. Since we are providing our
5 own parking space there should not be any bother
6 to the neighbors and as the light and other
7 requirements would not be any issue in this case.
8 That's it and if you have any questions I will be
9 happy to answer.

10 CHAIRPERSON SORG: Thank you Mr. Sikder,
11 I do have a couple of questions. First of all
12 could you elaborate on the property ownership?
13 Who is it that owns the property to the east and
14 west?

15 MR. SIKDER: The left side of the
16 property?

17 CHAIRPERSON SORG: Yes, I can see from
18 the photograph that you submitted let's say I'm
19 looking at "Exhibit No. 6" and you describe this
20 in your statement, there's a vacant house to the
21 left.

22 MR. SIKDER: The left, there's an

1 existing house on the left side, also I own the
2 property.

3 CHAIRPERSON SORG: Okay. Now following
4 on that one of your sort of contention for how
5 you describe the way your application meets the
6 first prong of the variance which is the
7 exceptional circumstances is that you describe
8 that the properties are, the lot cannot be
9 enlarged by combining and joining the right and
10 left since both of them are already developed and
11 in separate ownership. That's still accurate
12 given that you own both of the properties?

13 MR. SIKDER: I own on the left hand side,
14 I do not own on the right hand side so what I
15 meant that this lot cannot be enlarged because on
16 both sides the houses are on both sides. So this
17 lot cannot be enlarged, I cannot combine the left
18 hand side, there are houses there.

19 CHAIRPERSON SORG: Alright moving on from
20 there I understand that we did not get any
21 information from the ANC can you tell me if you
22 tried to reach out to them, I think I saw an

1 email; can you talk about that a little bit?

2 MR. SIKDER: I emailed them, actually I
3 talked to a gentleman I think (inaudible) he told
4 me that he was going to call me back but when he
5 didn't then later on this other, Ginger called me
6 and when I called her in the month of March she
7 said she could not give me any date in April. So
8 I couldn't make any ANC presentation in a
9 meeting.

10 CHAIRPERSON SORG: And what of speaking
11 to other neighbors in the surrounding property?

12 MR. SIKDER: Surrounding property I went
13 on the left hand side property a couple of times.
14 I could not meet with them and...

15 CHAIRPERSON SORG: I think you're the
16 owner of the left hand side.

17 MR. SIKDER: I'm sorry, on the right hand
18 side. I have no problem of course. The right
19 hand side property I could not meet any of them.

20 CHAIRPERSON SORG: Any other outreach
21 that you did to the neighbors on the surrounding
22 area?

1 MR. SIKDER: No, we talked to one lady we
2 are building on a house on the other side so
3 while that's not really on this same, not next to
4 the subject property so we told them that we are
5 going to build another house here and we are
6 seeking a BZA variance. I do not remember the
7 address 5812 I think, 5812 Foote Street.

8 CHAIRPERSON SORG: Okay, thank you very
9 much. Do other Board Members have questions for
10 the Applicant?

11 MR. SELFRIDGE: Thank you Madam Chair I
12 just wanted to revisit the idea of ANC 7-C. It
13 seems like you had sufficient time when did you
14 buy this property Mr. Sikder?

15 MR. SIKDER: I bought this property I
16 think is possibly in maybe in December or January
17 I do not remember that.

18 MR. SELFRIDGE: Okay thank you.

19 CHAIRPERSON SORG: Any other questions
20 from Board Members? Okay then let's move on to
21 the Office of Planning please.

22 MS. THOMAS: Good morning Madam Chair,

1 Members of the Board I'm Karen Thomas with the
2 Office of Planning. Madam Chair this is a
3 substandard lot within the R-2 District not
4 meeting the lot width and lot area requirements
5 and the Applicant wants to build a single family
6 detached home and he would really required
7 minimum side yard relief. From that he has
8 proposed a 3 foot side yard. As in the past we
9 think that there's an exceptional condition in
10 that the lot was created prior to the Zoning
11 Regulations so there is a practical difficulty in
12 building to the standards of the current
13 regulation. Without relief it would render the
14 lot unbuildable. When we looked at what was
15 being proposed with respect to the side yard that
16 would remain 3 feet. We had no issue with the
17 property to the left because there would be at
18 least 11 feet between the 2 structures. With
19 respect to the property on the right that
20 property is on the lot line but it forms a court
21 just a portion of the structure is on the lot
22 line. So the 3 foot side yard we didn't see a

1 problem with that. Also the windows would not
2 align with that property. So with that we have
3 no objection to relief being granted. Thank you.

4 CHAIRPERSON SORG: Thank you very much do
5 Board Members have questions for the Office of
6 Planning? I have just one question; you didn't
7 get any comments from the ANC?

8 MS. THOMAS: No and I kept looking but I
9 didn't see any.

10 CHAIRPERSON SORG: Okay, thank you. Does
11 the Applicant have questions for the Office of
12 Planning?

13 MR. SIKDER: No.

14 CHAIRPERSON SORG: Okay, thank you.

15 MR. HINKLE: Madam Chair this is a
16 question for Ms. Thomas. Reading your report and
17 your recommendations part of your analysis in
18 terms of this lot having an exceptional situation
19 is that you couldn't purchase the adjacent lot.
20 What we're hearing now is...

21 MS. THOMAS: I was unaware that he owned
22 that lot. In any event that lot has, I believe

1 an apartment building on it and those lots are
2 also small. Even if he was able to combine and
3 that lot was vacant it would also render that one
4 unbuildable as well.

5 MR. HINKLE: So there's no change in the
6 recommendation.

7 MS. THOMAS: No change.

8 MR. HINKLE: Thank you.

9 CHAIRPERSON SORG: I'm sorry you
10 mentioned an apartment building, I'm not
11 understanding?

12 MS. THOMAS: From what I understand the
13 building on the west side.

14 CHAIRPERSON SORG: Oh I see, okay thank
15 you. Any other questions for the Office of
16 Planning?

17 MR. JORDAN: Madam Chair we still don't
18 have an ANC report. Has planning heard from the
19 ANC?

20 MS. THOMAS: No we have not.

21 CHAIRPERSON SORG: If there are no
22 further Board questions then we'll move on to any

1 persons or parties in support? Seeing none
2 persons and parties in opposition? Seeing none
3 again. Is anybody present from ANC 7-C? Seeing
4 no one I will state for the record that the
5 Applicant testified he was in contact with the
6 ANC and requested according to his testimony
7 based in their April meeting but did not present
8 to the ANC and also that the Office of Planning
9 has not had any communication from the same ANC.

10 Any closing statement from the Applicant?

11 MR. SIKDER: No.

12 CHAIRPERSON SORG: Okay thank you Mr.
13 Sikder. Any final questions from Board Members?
14 At this point we'll close the hearing in this
15 case and move into deliberations. I can start us
16 off here we are looking at an application for a
17 variance from lot area and lot width under
18 Section 401 for a property on Foote Street in
19 N.E. What we've seen from the Applicant and the
20 Office of Planning Report is basically this lot
21 was created prior to the adoption of the Zoning
22 Regulations. The lot is about a little bit more

1 than half what's required in this area which is
2 an R-2 and then the width is also a little bit
3 more than 50% of what's required. The existing
4 lot that we understand from what the Applicant
5 has told us and the Office of Planning's Report
6 which is "Exhibit No. 22" is without this relief
7 they testified that nothing could be built on
8 this lot. Here I can see in terms of the
9 variance test that the uniqueness related to the
10 exceptional qualities of the property are pretty
11 clear, I think, regarding the width and the lot
12 area and being able to build. I think somewhere
13 in the file it says if you were to require the 8
14 foot side yard you end up with a 9 foot house
15 which I would not want to live in. I think the
16 Office of Planning addresses the practical
17 difficulty under the second prong. The Applicant
18 I think did so in his testimony more so than in
19 his statement prior. It really does seem to need
20 to flow from the exceptional situation of owning
21 a property that you build on no matter what
22 without some relief. So here I can see the

1 practical difficulty in terms of creating a
2 residence that met the standards in the R-2 as
3 well as perhaps from an economic standpoint can
4 be made an argument there as well. Based on the
5 plans that the Applicant submitted I think he's
6 gone a good way in the fencing that he's
7 proposing to install in protecting the
8 neighboring properties as much as possible with
9 the decreased side yards that would be present in
10 this project. Also in terms of the third prong
11 he's proposing a single family home which is what
12 the fabric of this neighborhood and this area is.
13 I think also important is that it looks like
14 care has been made in terms of the windows on the
15 side of the house so that they don't line up with
16 those in the neighboring properties. That being
17 said, and in addition noting the Applicant's
18 efforts as he testified to talk to the ANC
19 unfortunately we didn't get anything from them
20 and didn't have anyone here today. We also know
21 that he has tried to talk to the adjacent
22 neighbors. The property of course was also

1 posted for 2 weeks so there was public notice
2 that in my mind was adequate here. I believe I
3 can be in support of the application. With that
4 I will open up to further deliberation from
5 fellow Board Members.

6 MR. HINKLE: Thank you Madam Chair I tend
7 to agree with your analysis. I just wanted to
8 state that there is a significant amount of
9 relief being requested here and it would be nice
10 to have heard from the ANC and get some opinions
11 from them. However without that I do want to
12 note that we don't have any letters of opposition
13 or any testimony today in terms of opposition so
14 I can support this application.

15 MS. SORG: Thank you actually for
16 mentioning that Mr. Hinkle, you're right that's
17 an important point to make for the record. That
18 is a significant amount and we do always like to
19 hear from the ANC whenever possible it's an
20 important body for us to understand their views.
21 Any other further deliberation? Seeing none
22 then I will submit a motion to approve

1 Application No. 18204 for a variance from lot
2 area and lot width requirements under Section
3 401. Variance from side yard requirements under
4 Section 405 to allow the construction of a new
5 one family detached dwelling in R-2 at premises
6 5815 Foote Street N.E. A motion has been made is
7 there a second?

8 MR. HINKLE: Second.

9 CHAIRPERSON SORG: A motion has been made
10 and seconded. All those in favor say aye.

11 CHORUS: Aye.

12 CHAIRPERSON SORG: All those opposed.
13 Mr. Moy can you please read back the vote.

14 MR. MOY: Yes, Staff would record the
15 vote as 4 to 0 to 1 this on the motion of
16 Chairperson Ms. Sorg to approve the application
17 for variance relief from the lot area, lot width,
18 under Section 401 and side yard requirements
19 under Section 405. Seconded the motion Mr.
20 Hinkle and also in support of the motion Mr.
21 Jordan and Mr. Selfridge. We have one Board
22 Member not present, not voting. So again the

1 final vote to approve the application is 4 to 0
2 to 1.

3 CHAIRPERSON SORG: Thank you Mr.
4 Secretary. In the absence of opposition I think
5 we can call for a summary order. We can when
6 you're ready call the next case.

7 **Application No. 18205**

8 MR. MOY: The next is Application 18205
9 this is the application of Mr. Mohammed Sikder,
10 pursuant to 11 DCMR 3103.2 for a variance from
11 the lot area and lot width requirements under
12 Section 401, a variance from the lot occupancy
13 requirements under Section 403 and a variance
14 from the side yard requirements under Section 405
15 to allow the construction of a new one family
16 detached dwelling in the R-2 District at premises
17 4209 Grant Street, N.E. (Square 5092, Lot 31).

18 CHAIRPERSON SORG: Thank you Mr.
19 Secretary. I see that the Applicant has remained
20 at the table. Can you please introduce yourself
21 again for the record?

22 MR. SIKDER: My name is Mohammed Sikder

1 and I am the owner of the property.

2 CHAIRPERSON SORG: Thank you Mr. Sikder
3 before we get into the case I have a note here
4 and a question about the ownership of the
5 property. It looks like it's owned by a company
6 or an entity called Rupsha 2008, LLC is that
7 correct?

8 MR. SIKDER: That's correct and I'm the
9 sole member of this company.

10 CHAIRPERSON SORG: Alright I just wanted
11 to make sure that no additional authorization
12 would be required. Okay why don't you go ahead
13 and you can present your case.

14 MR. SIKDER: Good morning Madam Chair and
15 Board Members. This property at 4209 Grant
16 Street it is an R-2 Zoning District and it does
17 not permit the criteria to build a house as a
18 matter of right therefore we need BZA variance
19 from minimum lot area, lot width, side yard under
20 Section 401, 405, and 403, we are seeking these
21 variances. Currently it has 1765sqft and it
22 needs 4,000 square feet and the lot width is 25ft

1 and we have right now 40ft and we have 25ft feet
2 and across 40 feet. The lot occupancy we're
3 having 45.89% where it requires 40%. Side yard
4 it is required 8ft. but right now we are
5 providing 3ft on side and 5ft on the other side.
6 Also we are providing a parking space in the
7 back. Originally we submitted as a two floor
8 building but and having 3ft side yard on both
9 sides. But as for Office of Planning
10 accommodation we are narrowing the house with 5ft
11 on the left hand side and 3ft on the right hand
12 side and we are making it a 3 story building. I
13 submitted those revised plans to you earlier. For
14 this property exhibits a specific uniqueness with
15 respect to exceptional narrowness, shallowness,
16 shape, topography and situations and conditions.
17 This land it has a left hand side there's an
18 existing house and on the right hand side there's
19 an alley so there is no way we can expand this
20 lot in order to build this house. So that
21 definitely is practical difficulty for us and
22 would be unnecessarily burdensome to us. This

1 application can be granted without substantial
2 detriment to the public good and without
3 substantial impairing intent (inaudible) of the
4 Zoning Regulations and map. As we are providing
5 parking in the back side this would not be a
6 burden to neighbors or any others. In difference
7 to ANC Meeting initially I got an email from
8 Ginger that was in early I think that was in
9 February that she would be conducting an ANC
10 meeting in the month of April so we were ready
11 for this but then she mailed me sometime in early
12 April saying that this property is not in 7-D,
13 somehow that initially this is in 7-D but
14 actually this property is in it should be in 7-D
15 but they are assuming it's in 7-C. As a result
16 they told me just a few days before the meeting
17 they said send it to 7-D and I called them and
18 they could not give me this for the next ANC
19 meeting. I went to the neighbors on the left
20 hand side and they said they knew about this BZA
21 application and they would attend the meeting, I
22 mean the BZ hearing. There were a couple of

1 trees on our property, large 3 or 4 trees up
2 there so while I was out of country and my people
3 they didn't know that this country is under BZA
4 hearing so they sent some people to cut the tree,
5 then neighbors they complained and then they
6 stopped, they did not touch any tree. They did
7 not cut any tree. So we are basically, hopefully
8 we will get approval then as OP is trying to keep
9 some trees which we'll do. Other conditions they
10 set, I mean OP we are going to conform to that.
11 We'll go from there and at this moment I'll end
12 and if you have any questions I will be able to
13 answer.

14 CHAIRPERSON SORG: Thank you Mr. Sikder.
15 I have a couple of questions. I'm not quite
16 sure I understood the extent of your effort to
17 reach out to the ANC. When did you contact the
18 correct ANC?

19 MR. SIKDER: Contacted sometime in I
20 think it's about February.

21 CHAIRPERSON SORG: The correct one 7-D.

22 MR. SIKDER: 7-D they told me on April

1 4th that this case does not belong to ANC 6. I
2 contacted her on the same day. I contacted Kalik
3 Ali(sp) I contacted him the same day and he said
4 he would not be able to give us any space on this
5 month.

6 CHAIRPERSON SORG: So this is in the
7 middle of April?

8 MR. SIKDER: Middle of April.

9 CHAIRPERSON SORG: I'm not surprised that
10 they couldn't give you space. Do other Board
11 Members have questions for the Applicant?

12 MR. SELFRIDGE: I want to stay on this
13 ANC issue for a few minutes I think it's
14 important. I saw an email in here Mr. Sikder.
15 So you originally reached out to Ginger in 7-C in
16 March or February is that correct?

17 MR. SIKDER: Yeah about February.

18 MR. SELFRIDGE: Is Ginger in charge of
19 the whole ANC or just that Single Member
20 District?

21 MR. SIKDER: No she's actually I think
22 she's single member I think for 7-C.

1 MR. SELFRIDGE: 7-C so you just reached
2 out to the wrong ANC Single Member District.

3 MR. SIKDER: I think BZA sent letter to
4 them because they email me that I contacted with
5 Kalik Ali I think he is in general for both ANC
6 so he told me whenever it comes we'll contact you
7 and that's how I got an email from Ginger that we
8 set for you to present this case on April 13th. I
9 was assuming I didn't realize because it is in
10 the same location so I didn't realize which ANC
11 they were talking about either 7-D or 7-C I
12 thought it was the same thing somehow. They told
13 me that this case 4209.

14 MR. SELFRIDGE: That's fine I understand.
15 When did you speak to the ANC member at 7-D Ms.
16 Seaward at what point did you speak to her.

17 MR. SIKDER: Whenever she told me, she
18 sent me an email on April 4th and I contacted
19 Kalik Ali in the same day.

20 MR. SELFRIDGE: Kalik he's in charge, he
21 does the scheduling for 7-D.

22 MR. SIKDER: He's also for 7-D.

1 MR. SELFRIDGE: He's the Chair of 7-D.

2 MR. SIKDER: I think so because he looks
3 like he's normally in both ANC.

4 MR. SELFRIDGE: No he's not the Chair of
5 7-D. Ms. Seward is the Chair of 7-D.

6 MR. SIKDER: Ginger told me to contact
7 him which I did. Ginger told me to contact Kalik
8 Ali.

9 MR. SELFRIDGE: And who is he I still
10 don't understand.

11 MR. SIKDER: Actually you can see I sent
12 it to also this Ginger sent an email also talked
13 to Mr. Nero(phsp) telling him that we had
14 received the application in error.

15 MR. SELFRIDGE: Okay so when did you
16 speak to Ms. Seaward is when I'm trying to
17 establish?

18 MR. SIKDER: I talked to Kalik Ali at
19 least the same day.

20 MR. SELFRIDGE: So you never spoke to Ms.
21 Seaward who is 7-D...

22 MR. SIKDER: 7-D I mean she asked me to

1 call and talk to Kalik Ali.

2 MR. SELFRIDGE: Ms. Seaward did not Ginger.

3 MR. SIKDER: Ginger told me.

4 MR. SELFRIDGE: Okay I still want to
5 establish Ms. Seaward is the Single Member
6 District Member for this and she's the
7 Chairperson of ANC 7-D. I've got that correct is
8 that right?

9 CHAIRPERSON SORG: That's my
10 understanding.

11 MR. SELFRIDGE: Okay so you never spoke
12 to her.

13 MR. SIKDER: To whom?

14 MR. SELFRIDGE: The person who is
15 actually the chairperson of your Single Member
16 District, her name is Ms. Seaward when did you
17 speak to her?

18 MR. SIKDER: I called her; I called her
19 in the same time also Ginger told me if you
20 cannot reach her you can call Kalik.

21 MR. SELFRIDGE: Please Mr. Sikder answer
22 the question. You never spoke to Ms. Seaward the

1 Chairperson of ANC 7-D?

2 MR. SIKDER: Yes I did I...

3 MR. SELFRIDGE: What day did you speak to
4 Ms. Seaward?

5 MR. SIKDER: Same day.

6 MR. SELFRIDGE: You spoke to Ms. Seaward
7 on the 4th of April and you requested a chance to
8 get in front of their commission at that point.
9 She said she could not do it in April?

10 MR. SIKDER: No I did not say that. I
11 called her I didn't, I left a couple of messages
12 the same day and at the same time I called Kalik
13 Ali because he also told me, Ginger told me that
14 Kalik can also add in the meeting.

15 MR. SELFRIDGE: That's fine Madam Chair I
16 guess, I'm sure we'll hear from Ms. Seaward maybe
17 she can provide a little more clarity. This is
18 still unclear exactly what the process is here
19 and who's talking to the right people. I'm sorry
20 I do want to say that I think the Applicant has
21 some responsibility to understand what ANC he is
22 in when requesting and doing a project so I think

1 the burden is fairly high for him to prove that,
2 for whatever reason he didn't know who it was.
3 He should know who he's reaching out to.

4 CHAIRPERSON SORG: Thank you Mr.
5 Selfridge I absolutely agree. A couple of things
6 just on this issue I wanted to note in our file
7 we have I think in "Exhibit 18" the letter that
8 goes out from the Office of Zoning which went to
9 ANC 7-D. I mean I agree with you I think it's
10 the Applicant's burden to make sure that he's
11 contacting the correct ANC. This is a matter of
12 going on a website. I'm just trying to get one
13 other thing straight. I'm looking at this email
14 exchange that we received in your updated package
15 of May 5th its "Exhibit B" that Mr. Selfridge was
16 referring to. I'm not exactly understanding why
17 you didn't end up presenting on April 14th it
18 looks like, you know they're saying the meetings
19 on Thursday here's where it is, it's in the
20 basement, you know give us your names. What
21 happened after this email exchange that you
22 didn't end up presenting?

1 MR. SIKDER: Let me maybe explain again.

2 Maybe we are having some miscommunication.

3 CHAIRPERSON SORG: Yes it seems that way.

4 MR. SIKDER: We initially I talked to

5 Kalik Ali a long time ago I think maybe February

6 or early very early that we have an application

7 584209 and he told us that whenever we get the

8 application then we'll set up an appointment.

9 Then I received an email from Ginger that 4209 BZ

10 Application for 4209 is we reserved a space for

11 you on April 13th. I didn't even see where it

12 belongs or this is referring to. I thought this

13 is the right (inaudible) I looked at the BZA case

14 number I saw the address so it fits. It says

15 that the application will be presented April 13th.

16 Then I got an email from her that this is in ANC

17 7 and so this would go to ANC 7-D. Then I asked

18 her whom to whom shall I talk. She gave me 7-D

19 that lady's telephone number and I called her; I

20 left a message that this is the case and somehow

21 it got an error and went to ANC. I didn't hear

22 anything from her, then I called again Kalik Ali

1 that this is the case and if you can even to see
2 us or reserve for us why I cannot present it?
3 She said no, from that nothing I could do.

4 CHAIRPERSON SORG: Okay maybe we'll come
5 back to this, thank you. Any other further
6 questions for the Applicant? Okay then let's
7 move on to the Office of Planning.

8 MR. JESICK: Good morning Madam Chair,
9 Members of the Board my name is Matt Jesick. The
10 Office of Planning analyzed this case using the
11 three part variance test as with all variances.
12 We do feel that the property is uniquely small it
13 is impacted by an unusual lot to its south which
14 makes this lot smaller than almost every other
15 lot on the square. If relief is not granted it
16 would provide a practical difficulty for the
17 Applicant in that it could eliminate any viable
18 economic use of the property. Our primary
19 concern on this application however was the tree
20 canopy and that is reflected in our proposed
21 conditions of approval if the Board should chose
22 to move towards approval in this case. Our goal

1 at first was to look at all the trees on the site
2 to see if we could preserve all of them. It
3 looks like it would be highly unlikely that the
4 trees on the eastern side of the property could
5 be preserved if the home were to be constructed.

6 We focused our conditions on the tree at the
7 southern end of the property hoping to save that
8 tree if at all possible. In any event we
9 recommend that the Applicant plant a new tree at
10 the north end of the property and should the tree
11 at the southern end of the property die or have
12 to be removed for safety reasons that the
13 Applicant would also have to plant the new tree
14 at the south end of the property. We also
15 recommend protective fencing around the tree
16 during construction and the use of a pervious
17 parking pad to allow water to penetrate into the
18 soil to get to the roots of the tree at the
19 southern end of the property. So I'd be happy to
20 take any questions about the case, thank you.

21 CHAIRPERSON SORG: Thank you Mr. Jesick.

22 It looks like on the plans that we were given by

1 Mr. Sidker that it looks like he's intending to
2 retain the 3 trees on the eastern side. Your
3 recommendations came after these plans; I'm just
4 trying to understand the order here.

5 MR. JESICK: We actually had a previous
6 set of plans which clearly denoted that those
7 trees were to be saved however based on my
8 research and limited knowledge of trees building
9 a foundation that close to the trees would almost
10 certainly kill them. They might not die an
11 immediately they would become an expense to the
12 future homeowners to remove and it's much more
13 difficult to remove them once the structure is in
14 place. That's why I made the recommendation that
15 they definitely be removed beforehand by the
16 Applicant.

17 CHAIRPERSON SORG: Yeah they looked a
18 little close to me too. This is some tree heavy
19 recommendations. Do other Board Members have
20 questions for Office of Planning that are related
21 to the tree coverage otherwise I have a couple of
22 other unrelated separate questions?

1 MR. SELFRIDGE: Thank you Madam Chair.

2 The tree you suggested he retain was on the south
3 side of the property is that correct?

4 MR. JESICK: That's correct.

5 MR. SELFRIDGE: You may not have this but
6 we have a photo that was given to us from a
7 neighbor and it looks like and I may not have my
8 orientation correct of the lot and maybe Mr.
9 Sidker could weigh in on this as well. It looks
10 like the southern tree was removed the one on the
11 south end of the lot, have you seen that?

12 MR. JESICK: I was out at the site and
13 that southern tree is somewhat unusual in that it
14 has 3 main trunks and it looked like one of the
15 trunks had been totally removed but there was
16 still 2 trunks remaining at least when I was out
17 there a week or 2 ago. So the tree has been
18 heavily damaged, I'm hoping it will survive.
19 This is a very green neighborhood and that's why
20 I put in post condition number 7. The whole
21 purpose of the conditions are to try and save
22 that tree. If the tree cannot be saved then the

1 Applicant will be responsible for planting a new
2 tree in this location.

3 MR. SELFRIDGE: I'm going to just go back
4 to Mr. Sidker. It looks to me like the whole
5 tree was cut down or is that one branch.

6 MR. SIDKER: This thing happened while I
7 was out of country but I talked to my manager and
8 he said no tree was cut.

9 MR. SELFRIDGE: I've got this picture I
10 don't know who I should. I would like someone to
11 comment on this picture that has familiarity of
12 the site. It seems like Mr. Sidker would be the
13 person, have you seen this picture?

14 CHAIRPERSON SORG: Oh yeah we all have it
15 in our...

16 MR. SIDKER: Yes I see this.

17 MR. SELFRIDGE: So is that the southern
18 tree, it looks to me like it's been completely
19 removed. Can you comment on that is it true or
20 not true?

21 MR. SIDKER: I do not know. I was not
22 here while this happened and regardless as Office

1 of Planning commended if it happens and if this
2 cannot be saved we are going to plant new trees.

3 MR. SELFRIDGE: Mr. Jesick can you take a
4 look I'm just trying to get an orientation on
5 this site here to understand what occurred and
6 what didn't occur. Since Mr. Sidker can't
7 confirm what has or hasn't occurred on the lot
8 that he owns I'm wondering if somebody else
9 could.

10 CHAIRPERSON SORG: Okay for the record
11 what I'm doing is I'm handing Mr. Jesick our
12 "Exhibit No. 26" which has views of the tree
13 after it's been partially or cut. Go ahead Mr.
14 Jesick.

15 MR. JESICK: What I believe we're looking
16 at is the two remaining trunks of that tree that
17 had three trunks originally and the remains of
18 the third trunk in the foreground that's my
19 recollection when I was out at the site.

20 CHAIRPERSON SORG: Okay, thank you.

21 MR. SELFRIDGE: Thank you very much.

22 CHAIRPERSON SORG: Okay it looks like

1 we've got some of our, a couple of our tree
2 questions maybe a little bit more clear. I'm
3 going to ask you a general question. The
4 Applicant is proposing a three story house and at
5 my first thought it seems like it might be a
6 little bit, the height might be a little bit out
7 of scale. Can you talk a little bit about the
8 surrounding area and how many stories you see in
9 that fabric please?

10 MR. JESICK: Sure the surrounding area
11 has a variety of row homes, detached homes, semi-
12 detached homes and even small apartment
13 buildings. Most buildings are two stories tall.
14 We recommended the potential of a three story
15 home in order to reduce the lot occupancy. I
16 forget what the lot occupancy was when the
17 product was originally brought forward but we
18 want to bring it more in line with what's
19 permitted that's why we suggested a smaller
20 footprint. The Applicant then combining the
21 smaller footprint wanted the same floor area so
22 they pushed up to a third story. So if the

1 neighborhood prefers a two story design over a
2 three story design we're not opposed to that. We
3 wanted to bring it more in line with the allowed
4 lot occupancy.

5 CHAIRPERSON SORG: In the original design
6 that was two stories am I correct in saying that
7 the eastern side yard was, both were 3 feet?

8 MR. JESICK: Yes in the original design
9 both side yards were 3 feet.

10 CHAIRPERSON SORG: Okay. So the 3 story
11 modified plans pull it a little bit further away
12 from the eastern lot line?

13 MR. JESICK: That's correct and the other
14 thing it does just from the standpoint of the
15 Zoning Regulations that eastern side yard no
16 longer counts towards lot occupancy.

17 CHAIRPERSON SORG: Also speaking of lot
18 occupancy it seems like in the application
19 there's a little discrepancy that the Applicant
20 has indicated that he got about 46% but it sounds
21 like with the 3 story design we're at 50.2 is
22 that correct?

1 MR. JESICK: That's correct.

2 CHAIRPERSON SORG: Thank you. I want to
3 talk a little bit further about some of the other
4 conditions that you're suggesting here. I would
5 suggest to my fellow Board Members that we want
6 to come back to those issues a little bit later
7 after we hear from some of the folks. Would that
8 be suitable? Does anybody else have additional
9 questions for the Office of Planning? Does the
10 Applicant have questions for the Office of
11 Planning?

12 MR. SIDKER: No.

13 CHAIRPERSON SORG: Okay so we're going to
14 come back to the other conditions I think. Now
15 we'll call any persons or parties in support of
16 the application. Seeing none any persons and
17 parties in opposition? I see one young man eager
18 to speak. Why don't you go ahead and come up to
19 the table you can take a seat. If you have
20 witness cards I think you can hand them over to
21 the court reporter. Young man did you fill out a
22 witness card? Okay so when you're ready if you

1 can turn on your mics and introduce yourself
2 including your name and home address for the
3 record please.

4 MS. SEWARD: Hi my name is Willette
5 Seward I'm the ANC for the Single Member District
6 7-D-06 and I'm also the ANC Chairperson for ANC
7 7-D. Address 4234 Grant Street just a few doors
8 down from the lot 4209 vacant at this present
9 time.

10 CHAIRPERSON SORG: Good, glad to have you
11 here.

12 MR. WALLS: Good morning Madam Chair,
13 Members of the Board. My name is Lovell Walls.
14 I live in the lot next to what Mr. Sidker is
15 going to build on 4213 Grant Street, N.W. in
16 Washington.

17 CHAIRPERSON SORG: Thank you very much.
18 Since we have an individual and an individual who
19 is also the ANC representative I will live it up
20 to you all which order you would prefer to speak
21 in. Individuals are allotted 3 minutes to speak
22 if you would like to go first you're more than

1 welcome. If you would prefer Ms. Seaward.

2 MS. SEAWARD: I just have a question.

3 Because we are individuals we cannot cross
4 examine is that correct?

5 CHAIRPERSON SORG: As the ANC you can.

6 MR. MOY: There won't be a time limit if
7 she is speaking on behalf of the full ANC. Oh
8 cross examination.

9 MS. NAGELHOUT: Am I understanding she's
10 not here representing the ANC she's a Single
11 Member District in case she would be a person not
12 a party so there would not be cross examination.
13 But she could raise questions that she would
14 like the Board to ask the Applicant.

15 CHAIRPERSON SORG: Okay I understand that
16 but if she's also the Chairperson of 7-D is she
17 automatically authorized by the ANC 7-D to
18 represent them?

19 MS. NAGELHOUT: No I think the ANC is
20 supposed to vote on who...

21 CHAIRPERSON SORG: Okay so what we'll do
22 is we understand of course, your position but as

1 the Single Member District you'll be testifying
2 as an individual and if you have questions that
3 you would like for the Board to answer as counsel
4 has said you can sort of indicate those which
5 you'd like answered and will request the Board to
6 pursue with the Applicant.

7 MS. SEAWARD: I guess I'll start. I'm a
8 17 year resident on the block and a
9 Washingtonian. Mr. Sidker had never reached out
10 to ANC 7D-6 myself as the Single Member District
11 he continued to express that he reached out to
12 Commissioner Chair Kalik Ali and Ms. Ginger who
13 is their Administrative Assistant in the office.
14 She is not a Single Member District ANC at all.
15 Apparently the Applicant doesn't even know where
16 his property is, what's happening with his
17 property and we have great concerns with that.
18 The tree that you did see from the owner who
19 lives in 4213 who sent those pictures in lives
20 next door and I believe that is a south bound
21 tree that was cut down. The day of the tree
22 cutting was on April 21st. Early morning as I was

1 going into work I saw the tree being cut down and
2 stopped to speak to my neighbor and asked what
3 was going on and we saw that there was one truck
4 on the lot cutting the trees down and then there
5 was a second larger truck that came. I had to
6 leave I stated for about 15 minutes or so. I
7 contacted Council Member Alexander's Outreach
8 Constituent Service Mr. Amin Muslim, he came by,
9 he took down some notes, and he also wrote phone
10 numbers of the trucks. He found out that one of
11 the trucks had a dead license plate a 2005 from
12 Georgia and that truck fled the scene. There was
13 just a havoc or situation on the lot. Mr. Sidker
14 had never reached out he did state to you that he
15 contacted me; I'm very responsive on email as
16 well as phone calls. I don't know this
17 gentleman, his notice to the public was just
18 posted on April 30th on the lot itself and it
19 doesn't even provide the two weeks' notice that I
20 believe the Board of Zoning requires for the lot
21 notice of public notice. This Applicant is very
22 irresponsible to the community. I have not seen

1 his design but to hear that the Office of
2 Planning had made a recommendation of 3 stories
3 granted we do have small row homes in the
4 community. The applicant next door at 4213 their
5 home is more of a rambler style low home in the
6 community. The homes in the community are a
7 majority row homes either two-story homes or
8 small apartment buildings. So the lot is very
9 narrow, it's next to an alley way. The size of
10 the lot looks unbuildable. The beautiful trees
11 that are there disrespectfully so if he has
12 partners in this lot in our community and he has
13 not reached out to them to allow our trees to be
14 cut down illegally I believe Mr. Amin Muslim sent
15 the information over to the Forestry Office and
16 the Applicant was actually fined. I don't have
17 that information with me of how much but they
18 were sent the fine because they did cut down
19 trees without having any particular license and I
20 will stop my testimony at this point if you have
21 any questions please feel free to do so.

22 CHAIRPERSON SORG: Thank you Ms. Seaward.

1 Do Board Members have questions?

2 MR. JORDAN: Yes if I may. So there
3 trees actually were cut down. You actually saw
4 the trees cut down.

5 MS. SEAWARD: Yes on April 21st, a.m.
6 Mr. Sidker stated no trees were cut down.
7 Apparently he has not seen the pictures you
8 stated but he does not even know which District
9 his lot is located in so he wouldn't know one way
10 or another. Maybe he does and is thinking that
11 Applicants and residents to live a green
12 community don't know where we live.

13 MR. JORDAN: Additionally regarding the
14 ANC Meeting do you have any knowledge to whether
15 an invitation was offered for a representative to
16 come from the ANC.

17 MS. SEAWARD: Mr. Sidker stated on
18 several occasions in his testimony that he
19 reached out to Mr. Kalik Ali that is 7-C not 7-D
20 he has never contacted me ever. Thank you.

21 MR. JORDAN: Prior to this hearing you've
22 had conversation with the Applicant?

1 MS. SEAWARD: I have never seen this man,
2 have never talked to his man and have had no
3 communications with him, ever. Again he had only
4 reached out to Ms. Ginger who is the ANC-7-C as
5 in Charlie; we are 7-D as in David. I have never
6 seen or heard of him at all.

7 MR. JORDAN: I'm just trying to understand
8 his knowledge base of 7-D versus the testimony I
9 was given here today.

10 MS. SEAWARD: He has no knowledge base,
11 he is lying, he has no knowledge base of this
12 community none at all.

13 CHAIRPERSON SORG: I think there is some
14 lack of clarity on the issue of communication
15 with the ANC. I want to go back to a different
16 point that you made which has to do with the
17 density and the kind of houses that you find
18 here. You said that you had not seen any of the
19 plans that are contained in this application is
20 that correct?

21 MS. SEAWARD: That's correct I received
22 the numbers very late. I received it at an early

1 point. I would have reached out but also I
2 believe that Applicants have a responsibility
3 that they have plans to disrupt sometimes or
4 attribute to. My notice probably went through
5 Hell and beyond excuse me but it looks a mess.
6 This is how I got it and I got it really late so
7 I was not able to allow him on any meeting date.
8 We're now in June nearly and we plan our
9 meetings 30 days out and we do have an executive
10 meeting every month to allow particular
11 applicants and/or those who are seeking letters
12 of support for their particular projects that
13 affect our commission as a hole.

14 CHAIRPERSON SORG: Okay, thank you very
15 much.

16 MR. SELFRIDGE: Madam Chair not to beat
17 on this too much but it's not been clarified. So
18 you've never been contacted by the Applicant?
19 What is that letter that you have in front of you
20 Ma'am?

21 MS. SEAWARD: This is a Board of Zoning
22 notice.

1 MR. SELFRIDGE: That came out of this
2 office?

3 MS. SEAWARD: Yes, I don't know if it got
4 lost in the mail but I got it really late.

5 MR. SELFRIDGE: But you said the property
6 was posted whenever it was posted, right?

7 MS. SEAWARD: It was posted just recently,
8 April 30th.

9 MR. SELFRIDGE: And when is your ANC
10 Meeting?

11 MS. SEAWARD: We meet every second
12 Tuesday of the month.

13 MR. SELFRIDGE: So your meeting is
14 tonight?

15 MS. SEAWARD: Yes 6:30pm.

16 MR. SELFRIDGE: Okay the meetings'
17 tonight at 6:30pm and if Mr. Sidker reached out
18 to you in the future would you usually make room
19 for him to present his case?

20 MS. SEAWARD: Yes especially in a case
21 such as this we would make room because it does
22 affect a particular development in the community.

1 MR. SELFRIDGE: Anytime a developer
2 reaches out to you give them space on your agenda
3 to present their project, that's your policy?

4 MS. SEAWARD: Correct that is the policy
5 especially if there's something that affects the
6 community in a short frame of time.

7 MR. SELFRIDGE: Thank you.

8 CHAIRPERSON SORG: Thank you Mr.
9 Selfridge I get where you're going with that and
10 I'm with you there. I think what I'd like to do
11 is, I think what we'll probably do is we will
12 finish up hearing this portion of the case today
13 but I will after we do that I think we want to
14 probably recommend that Mr. Sidker work with Ms.
15 Seaward to get on the ANC calendar because
16 there's some questions here and I think there's
17 some flexibility regarding both the trees, what
18 the plan is, what's happened, what the community
19 would like to see happen. As well as you've
20 heard in testimony today we've seen a 2-story
21 scheme, we've seen a 3-story scheme. It sounds
22 like there's some flexibility on the Applicant's

1 side there that maybe something that and I
2 certainly think that's something that should be
3 worked through not only with the Office of
4 Planning but also with the community. That being
5 said I think move on to the next...

6 MR. JORDAN: Madam Chair I'll be brief if
7 I can and I understand what you're saying as a
8 possible resolution but I think it goes a little
9 bit deeper than that. I think we probably need
10 to go ahead and continue the hearing..

11 CHAIRPERSON SORG: Yes that's what I'm
12 suggesting absolutely. So are there any further
13 questions for Ms. Seaward.

14 MR. WALLS: Madam Chair I have a question
15 is my testimony even necessary right now?

16 CHAIRPERSON SORG: We certainly would
17 like for you to give your testimony. What we'll
18 do is we're going to continue with the hearing as
19 it's scheduled for today and then at the end of
20 the hearing today we'll work out what the Board
21 wants to require of the Applicant in terms of
22 either additional documents. We're not going to

1 deliberate or decide on this case today.

2 MR. JORDAN: Well I think we need to talk
3 about that Madam Chair because I think we might
4 need to do that. I think we should continue
5 through this hearing and then talk about how to
6 handle it.

7 CHAIRPERSON SORG: Certainly that's
8 perfectly fine. So as we were saying are there
9 any further questions for Ms. Seaward? Okay so
10 let's move on.

11 MR. WALLS: Thank you Madam Chair mines
12 going to be pretty brief. Members of the Board
13 my written opposition is dated April 24th and I
14 think you all have a copy of it. I was also the
15 person that sent you all the copies of the
16 pictures.

17 MR. SELFRIDGE: I'm sorry sir what's your
18 name?

19 MR. WALLS: Lovell Walls.

20 MR. SELFRIDGE: I have an April 30th
21 submission from you.

22 MR. WALLS: The 30th, I'm sorry sir. My

1 family has owned this property for more than 70
2 years. My mother Wynonna Walls has owned this
3 property since 1985 when my grandmother died.
4 There's a reason why this property has been
5 vacant for many, many years because you can't
6 build anything on it. When my grandfather was
7 alive he was approached multiple times by
8 builders to buy the property and build on it.
9 Two problems; number one your right next to an
10 alley, number two and I don't know whether Mr.
11 Sidker is privy to this but there are large trash
12 trucks and large industrial trucks that come
13 through the alley and sometimes hit fences of the
14 adjoining property. I'm not going to repeat what
15 Ms. Seaward said or anything like that but Mr.
16 Sidker did approach my wife a week ago on Friday
17 and only to ask whether we were coming to the
18 hearing. I was not home I was at work, my wife
19 said we would be here and we are here. Once
20 again I'll state my strong opposition to building
21 on this property. There were trees were cut down
22 whether Mr. Sidker was in country or not it's his

1 responsibility for getting the proper permits or
2 talking to the right people in order to get
3 things done. That is my statement Ma'am.

4 CHAIRPERSON SORG: Thank you Mr. Walls.
5 So my first question for you is did Mr. Sidker
6 share the building plans that he was going to
7 bring before the Board with you or his wife?

8 MR. WALLS: No Ma'am he did not he just
9 asked whether we knew about the hearing and
10 whether we were going to come to the hearing.

11 CHAIRPERSON SORG: Okay. Do other Board
12 Members have questions for Mr. Walls?

13 MR. SELFRIDGE: I want to get back to the
14 trees Mr. Walls because you know better than
15 anybody. I still contend the southernmost tree
16 was cut down, is that correct?

17 MR. WALLS: Commissioner Selfridge, yes
18 sir you're correct.

19 MR. SELFRIDGE: Let me just stay on it
20 real quick because I want to get clarity here.
21 Your pictures which are "Exhibit 26" came in with
22 your April 30th submission. It looks like there

1 were actually 2 unique trees or stand of trees
2 that were impacted. There's one tree in the
3 center of the lot on the western side, I believe
4 it's the western side that maybe have had a
5 single branch removed, and this may have been a 3
6 trunk tree. Then I see a pile of debris at the
7 south western corner which is the alley side sir.
8 The alley is on the west side that that was
9 removed as well. So I'm seeing two distinct
10 trees being cut down.

11 MR. WALLS: Yes there were two whole
12 trees cut down and I'll show you the picture.

13 MR. SELFRIDGE: That's the one.

14 MR. WALLS: If you look to the center
15 left you'll see 2 or 3 large tree trunks.

16 MR. SELFRIDGE: Okay so that's it we lost
17 a branch of the 3 trunk tree and then we lost the
18 whole southern tree. I believe Mr. Jesick this
19 is the one the Office of Planning suggested that
20 the Applicant retain is that correct?

21 MR. JESICK: That's correct; I'll state
22 again I think the tree at the south that I

1 intended to try and keep one of which was taken
2 down totally.

3 MR. SELFRIDGE: There was another single
4 trunk one on the south west corner. That wasn't
5 the one you were speaking of you were more in the
6 center south west kind of the western side of the
7 lot against the alley. The 3 trunk tree was the
8 one you were concerned about?

9 MR. JESICK: That's correct.

10 MR. SELFRIDGE: Okay. Mr. Jesick maybe
11 you can just clarify for me. Maybe this is out
12 of your realm a little bit. What's the process
13 for removing a tree isn't 18 inches or larger you
14 have to have a permit. Some trees can be cut
15 down on private lots, some can't?

16 MR. JESICK: I'm sorry I can't answer
17 that question I don't know the answer.

18 MR. SELFRIDGE: That's fine thank you.
19 That was all for me Madam Chair I just needed the
20 clarity on that.

21 CHAIRPERSON SORG: Thank you very much is
22 there any further questions from Board Members

1 for Mr. Walls.

2 MR. WALLS: I have one addition my wife
3 just informed me that when she spoke to the
4 person from Urban Forestry that a permit is
5 needed to cut a tree 17 inches in diameter.

6 CHAIRPERSON SORG: We're aware of that
7 even though it's not under our specific
8 jurisdiction.

9 MR. SELFRIDGE: I'm sorry somebody
10 clarified I did have a question was it 18 inches,
11 right?

12 MR. WALLS: It was 17 inches.

13 MR. SELFRIDGE: Its 17 inches you need a
14 permit to cut it down.

15 MR. WALLS: Yes sir.

16 CHAIRPERSON SORG: So if there are no
17 further questions from the Board for the persons
18 having testified in opposition for the Applicant
19 then next we would turn to the ANC. We've heard
20 from Ms. Seaward who is the Single Member
21 District as well as the Chairperson of 7-D but
22 we've heard from her today in the capacity of an

1 individual in the absence of a specific
2 resolution authorizing her to testify for the ANC
3 itself which is something we may remedy but we'll
4 get back to that. Now what we will do is let's
5 see if the Applicant has any closing statements.

6 MR. SIDKER: Not a closing statement but
7 I have one remark that Ms. Seaward says I never
8 contacted her. Very clearly I call her on April
9 4th. The last call I made to her on the 6th at
10 3:45pm I left a message and I was very surprised
11 she didn't get the message and said I never
12 contacted her. Secondly I still am confused
13 about this myself because this tree was; these
14 are not freshly cut this cut a long time ago.
15 Actually I told my manager he said no tree was
16 cut totally.

17 MR. SELFRIDGE: Mr. Sidker I have a
18 photograph property "Exhibit 6" I don't know who
19 submitted it but right here it clearly shows
20 there's a tree that has been cut down. So I'm
21 not sure your doing yourselves any favors here.

22 MR. SIDKER: I'm saying that it was cut

1 but cut when. You can see this was cut a long
2 time ago not just recently in 3 weeks.

3 MR. SELFRIDGE: Mr. Walls when was that
4 tree cut down.

5 MR. WALLS: April 21st.

6 MR. SELFRIDGE: We're talking about the
7 one in the back corner that I've identified as
8 the southwest corner.

9 MR. SIDKER: Can you show me which tree
10 was cut?

11 MR. WALLS: This is April 21st.

12 MR. SELFRIDGE: Cut down April 21st?

13 MR. WALLS: Yes, 7:30am. How do you know
14 sir when you were out of the country?

15 CHAIRPERSON SORG: Mr. Walls when
16 testifying as an individual you can address the
17 Board. Your time is actually officially up. We
18 understand the difference in your testimony and
19 as the neighbor who has testified that you were
20 home at the time and witnessed the cutting of the
21 tree. We are definitely understanding that and
22 taking that into account and appreciate that

1 testimony for sure. It seems like we've heard a
2 lot about the cutting down of these trees and
3 there's some conflicting testimony we've heard
4 from the Applicant about his knowledge of what
5 happened to these trees that were present on this
6 property. We've heard from the Office of
7 Planning as well we've heard from the neighbors.
8 We've got photographic evidence in our file. I
9 think we can take all of the information that
10 we've heard about this as a Board and look at the
11 way to balance it out. Do any Board Members have
12 any questions for the Applicant, the witnesses or
13 the Office of Planning?

14 MR. HINKLE: Madam Chair I'm looking at
15 "Exhibit 6" which Mr. Selfridge just referred to
16 I believe and maybe we could ask the Office of
17 Planning to take a look at this photograph. I
18 think Mr. Selfridge the tree that you're
19 referring to is not on the subject property. If
20 I look at the lot plan there's another lot behind
21 it. Is that correct Mr. Jesick?

22 MR. JESICK: Yes that's correct that tree

1 that's near the confluence of the two alleys that
2 is not on the subject property.

3 MR. SELFRIDGE: So that's an easement is
4 that correct?

5 MR. JESICK: I believe that parcel is
6 privately owned or that lot is privately owned.

7 MR. SELFRIDGE: Okay I actually do see
8 that, that's very helpful. So that was not on
9 Mr. Sidker's property its lot 800 it looks like.
10 That helps me I don't know who put it down but
11 in regards to that it's less relevant to me
12 because it's not on the subject property.

13 MS. SEAWARD: Excuse me can I add this.
14 I only have one copy but this is the email that
15 Mr. Amin sent to Mr. Duffy which is the Agency of
16 Forestry on the same day and you can read it. I
17 only have one copy, if you like.

18 CHAIRPERSON SORG: Okay Ms. Seaward why
19 don't you hand that to Mr. Moy and he can make
20 that available to the Board.

21 MS. SEAWARD: So can I ask the Board to
22 ask Mr. Sidker who is she or her that he spoke to

1 or left the message for and was her number?

2 CHAIRPERSON SORG: Based on how I think
3 we're going to go forward I think in terms of
4 speaking with the ANC we're going to resolve that
5 to the ANC's satisfaction. So if there are no
6 more Board questions for the Applicant or the
7 witnesses what I'm going to do at this point is
8 suggest that having gone through our process we
9 will close this hearing for today and make some
10 requests of the Applicant. I will start us off
11 and then I can ask our other Board Members to
12 chime in with other material or actions that they
13 believe might be helpful in completing the record
14 in this case. The first thing I would like to do
15 is I would like after we conclude this hearing
16 for Mr. Sidker and Ms. Seaward to get together
17 outside in the hall to find a date to get on the
18 ANC calendar. If it's tonight or if it's 30 days
19 from now you need to do that. Clearly there's a
20 community here that doesn't understand what
21 you're proposing on this property and who
22 deserves to and has some major concerns. They

1 are interested to have input and trying to
2 understand what you're doing. They are an
3 organized community trying to preserve the
4 neighborhood that they've invested in. I need
5 you to redouble whatever outreach you have to the
6 community, talk together, and get it set down and
7 go to the hearing. Inform the Office of
8 Planning; what we'll do is we can schedule our
9 next hearing for after next month's hearing. So
10 that's one thing we need to see happen so that
11 everybody including the neighbors, including the
12 Single Member District can understand this
13 project, can give their input. The next thing
14 that I would like to see from you Mr. Sikder is a
15 clear statement about the trees that are on this
16 lot, what the original state of them was, what
17 has happened since then, and what is your plan
18 for preserving or removing any of those trees.
19 Then there are some things in the OP Report which
20 you have, corrected? Some of the conditions that
21 I think I would like to see reflected in the
22 plans. So once you go to the ANC in the

1 community and get back with the Office of
2 Planning or look at their conditions I'd like to
3 see for example the plans updated to reflect some
4 of the conditions that they are requesting. For
5 example the plans should show that, if this is
6 something you're willing to do that the 3 trees
7 on the eastern side of the property are removed.
8 We are as you know in the practice of voting on
9 plans that are accurate to the project that's
10 being proposed. If we get down the road in these
11 hearings once you've worked with the community if
12 we get to the point we're not going to vote until
13 there's a set of plans that reflect the project
14 is our understanding. Those are the three things
15 that I would like. Are there other requests that
16 Board Members may have?

17 MR. SELFRIDGE: I would just request that
18 when this does go in front of the ANC that we
19 receive an official ANC letter back recording the
20 vote on this as well. What I don't want to see is
21 that they go to the ANC and the ANC takes no
22 action. I strongly encourage the ANC to take

1 some sort of action so we have a recorded vote on
2 the record.

3 CHAIRPERSON SORG: I should think Ms.
4 Seaward you're going to get that under control
5 correct?

6 MR. SEAWARD: I'm glad that Mr. Selfridge
7 mentioned that because ANC will be voting in
8 opposition of the letter in great weight tonight.

9 CHAIRPERSON SORG: Hold on one second
10 there. I think we would like to...

11 MR. SELFRIDGE: In the spirit of this Ms.
12 Seaward we would like to allow the Applicant to
13 go back and re-approach the ANC and see if
14 there's an opportunity to present his case if he
15 so chooses to and if he chooses not to then so be
16 it. But I think in the spirit you've been
17 through these proceedings before it's very
18 important to at least go through the process and
19 allow people the opportunity to present and allow
20 others to comment or not comment as sees fit but
21 it's better for everybody regardless of the
22 outcome of this if it's done properly and the I's

1 are dotted and the T's are crossed.

2 MR. JORDAN: If I may Madam Chair I think
3 something has been said that's not necessarily
4 correct but by the Board is that the ANC doesn't
5 understand what the Applicant is proposing I
6 think they understand clearly. I don't think
7 it's an issue about them understanding and so I
8 understand what the Board is asking is that you
9 meet with the Applicant and have discussions and
10 then come back to the Board. Additionally I
11 would like to see something more from the Office
12 of Planning regarding the 3-story that's been
13 recommended whether or not that's in character of
14 the neighborhood because I think there is some
15 question there about the 3-story being in
16 character. I think also the issue about the
17 ownership of this property, not just the back
18 portion we need to know who owns that but the
19 portion about the LLC because I think I heard
20 statements by the Applicant that it's an LLC but
21 he's with an ownership group and we don't have
22 any documentation as to that entity on file.

1 CHAIRPERSON SORG: Thank you Mr. Jordan
2 at the beginning of the hearing Mr. Sidker tells
3 me that he was just the owner of the LLC but I
4 think he will provide documentation of that.

5 MR. SELFRIDGE: I think my colleague made
6 some good points. I do want to clarify for my
7 purpose. I've certainly heard from the SMV
8 Commission Member on this but I would like to
9 hear from the full ANC I do think that's helpful.
10 Certainly the SND Member is in the neighborhood
11 and probably is most familiar with what the
12 people who are most closely affected, their
13 impressions and thoughts about the project. I do
14 think we would like to have the whole ANC weigh
15 in on that. That's what I would hope to see.

16 CHAIRPERSON SORG: I agree Mr. Selfridge.
17 I think it is important for the Applicant to
18 work very hard as it's your burden to get with
19 this ANC to present to them. Are you available
20 this evening? Ms. Seaward will you give Mr.
21 Sidker a place on your agenda this evening to
22 present his project?

1 MS. SEAWARD: I can't speak to that
2 because the Board weighs in a week prior and give
3 prior notice to the community. Because of the
4 situation of when I received the notice late but
5 we were able to add it on our agenda to oppose
6 the project, 3 other Commissioners did come to
7 the lot to see that the lot was unbuildable and
8 did agree that we would put this on our agenda
9 for tonight as a vote of great weight and was
10 going to provide that to the Board of Zoning in
11 opposition to this project.

12 CHAIRPERSON SORG: Okay well I hear you
13 and we can't force the ANC to hear the
14 presentation but as Mr. Selfridge indicated we
15 would very much indicated that there is a dialog
16 regarding this. I know that Mr. Sidker will be
17 at the meeting this evening.

18 MS. SEAWARD: Does he know where it is
19 because he didn't know where the lot was. But I
20 can give him the address if needed.

21 CHAIRPERSON SORG: That would be great if
22 you could do so after this. So all of that being

1 said and everyone is clear on what we are
2 requesting. Do you have a question Mr. Sidker?

3 MR. SIDKER: An updated plan showing the
4 tree and the plan of the proposed trees right.

5 CHAIRPERSON SORG: What I'm asking for is
6 a set of plans when we come back that are
7 accurate to what the project is going to be. If
8 the trees are there leave them in the plan. If
9 they are not there leave them out of the plan.
10 If the house is 2-stories show me 2-stories. If
11 the house is 3-stories show us 3-stories.

12 MR. SIDKER: And the (inaudible) the
13 entity papers right, the LLC papers.

14 CHAIRPERSON SORG: Please and then we're
15 going to work on dates right now. You have
16 something to add Ms. Seward.

17 MS. SEAWARD: Yeah I do your stating that
18 you would like him to come before the ANC and
19 then stated that it may not be a possibility for
20 this month because we have a closed hearing
21 already. I have never seen the plan I don't know
22 how this particular 2-story or 3-story that Mr.

1 Jesick of Office of Planning has decided in our
2 community.

3 CHAIRPERSON SORG: Well Ms. Seaward
4 that's why I was suggesting that it would be a
5 good idea for you to allow Mr. Sidker either in
6 tonight's meeting or your meeting next month to
7 be able to present his plans to you so that you
8 could discuss them so that if there is some way
9 that the community and this property owner can
10 agree you might get there. So if you're
11 suggesting that, when is your next meeting?

12 MS. SEAWARD: June 14th I believe. So if
13 you can allow Mr. Sidker to be on the schedule
14 for that meeting what I want to do is we will
15 schedule the next hearing for 2 weeks after June
16 14th so whether he can get on your schedule
17 tonight or on June 14th everybody will have plenty
18 of time to respond to the requirements that the
19 Board has made as well as to hopefully get an ANC
20 resolution or letter there.

21 MS. SEAWARD: To agree with Mr. Jordan
22 who has stated that the position of the ANC yes I

1 am a Single Member but also have 3 or 4 other
2 Commissioners who have seen the lot and do agree
3 that that lot is unbuildable so we do understand
4 our position and we do understand the area that
5 the Applicant has is unbuildable so even allowing
6 him to come to the June 14th meeting I think the
7 ANC position that will be taken tonight will
8 still stand.

9 MR. SELFRIDGE: Ms. Seaward he can't do
10 anything until we approve it so delaying
11 certainly doesn't hurt you or your position so
12 why don't we try to get him on the calendar it
13 can't hurt anything can it?

14 MS. SEAWARD: No I can ask for a table of
15 that particular...

16 MR. SELFRIDGE: Let's get him on the
17 calendar let's see if some other people from the
18 ANC, I understand you're the Chairperson but
19 you're only one vote so let's get the full ANC on
20 record. Any delays certainly don't impact you or
21 damage you or Mr. Walls so I don't understand why
22 there's resistance to this.

1 CHAIRPERSON SORG: Okay?

2 MS. SEAWARD: Okay.

3 CHAIRPERSON SORG: Thank you Mr.
4 Selfridge. Mr. Moy dates.

5 MR. MOY: Yes Madam Chair assuming that
6 the ANC is meeting on this application on the 14th
7 of June, the next available for the Board would
8 be June 21st in the afternoon. If not then, then
9 the next date after that would be July 19th. July
10 12th is reserved for decisions.

11 CHAIRPERSON SORG: Right I hear you.
12 Let's schedule this for July 19th.

13 MR. MOY: Madam Chair for my
14 clarification would this be a continuing public
15 hearing or are you setting this for a decision
16 date?

17 CHAIRPERSON SORG: A continued public
18 hearing.

19 MR. MOY: Okay perfect.

20 CHAIRPERSON SORG: Actually scratch that
21 let us schedule the continued public hearing for
22 Tuesday the 21st of June.

1 MR. MOY: Very good in the afternoon
2 Madam Chair.

3 CHAIRPERSON SORG: So that will conclude
4 today's portion of this hearing and we will see
5 you all June 21st. Meanwhile I hope that the
6 Applicant and the community will make as much
7 effort as possible to come together and discuss
8 what's on the table here. If anybody has
9 questions they can go to the Office of Zoning
10 after this hearing to help clarify anything that
11 is left.

12 MR. MOY: Excuse me Madam Chair before
13 you conclude this case, are we going to give
14 dates for submission of the materials?

15 CHAIRPERSON SORG: Of course, I'm sorry
16 we will. I think...

17 MR. MOY: Would you like me to make a
18 suggestion Madam Chair?

19 CHAIRPERSON SORG: Sure.

20 MR. MOY: If the Applicant can submit his
21 material for application by Tuesday June 7th,
22 perhaps a week would be ample time with the ANC

1 meeting on the 14th and any responses say by
2 Friday June 17th including Office of Planning.

3 CHAIRPERSON SORG: Thank you Mr. Moy. I
4 think we would like to put the deadline for
5 submissions after the ANC Meeting maybe on Friday
6 the 17th.

7 MR. MOY: Is there going to be a response
8 period for the Applicant? No, you want in other
9 words you want everything on the 17th?

10 CHAIRPERSON SORG: Well okay then let's
11 go back to your suggestion to have the Applicant
12 submit and the Office of Planning on the 7th of
13 June and then deadline for responses on the 17th.

14 MR. MOY: Okay that works.

15 CHAIRPERSON SORG: Alright thank you.

16 MS. SEAWARD: I'm kind of confused. So
17 you're requesting that the Applicant provide
18 submission along with the Office of Planning.
19 Will the ANC receive any documentation like as
20 stated? I only have this one letter and I have
21 never seen any drawings and I don't have any
22 specific input from the Office of Planning as

1 well. So what do we use to guide ourselves as an
2 ANC Commission?

3 CHAIRPERSON SORG: We will request that
4 the Applicant submit all the documentation to you
5 on the 7th in advance of your meeting on the 14th.

6 MR. SIDKER: Just to clarify I send at
7 least two weeks prior is that enough?

8 MS. SEWARD: Two weeks prior to our
9 meeting date?

10 MR. SIDKER: Yes.

11 MS. SEAWARD: Yes two weeks prior, so
12 you're stating two weeks prior.

13 CHAIRPERSON SORG: That's sounds good and
14 make sure everyone gets everything that they're
15 supposed to and so does that conclude all of our
16 business on this Mr. Moy?

17 MR. MOY: Yes unless you want to repeat
18 the dates again?

19 CHAIRPERSON SORG: Alright why don't you
20 repeat what we've discussed?

21 MR. MOY: Okay as I understand it the
22 Board set a deadline for the Applicant to submit

1 by June 7th although he admitted that he could
2 supply the information by May 31st. Any responses
3 would be due June 17th which is a Friday which
4 would include a response from Office of Planning.

5 CHAIRPERSON SORG: Okay thank you very
6 much, thank you everybody. Let's call the next
7 case when you're ready.

8 **Application No. 18206**

9 MR. MOY: The next application for Board
10 Action is Application No. 18206 of Janet Fries,
11 pursuant to 11 DCMR 3104.1 for a special
12 exception to allow an accessory basement
13 apartment within an existing one family detached
14 dwelling under (subsection 202.10) in the
15 FH/TSP/R-1-B District at premises 5140 Linnean
16 Terrace, N.W. property located at (Square 2032,
17 Lot 69).

18 CHAIRPERSON SORG: Thank you Mr. Moy it
19 seems like we've lost a couple of folks up here
20 so we're just going to wait a couple of minutes.

21 Good morning if everyone can introduce
22 themselves stating their name and home address

1 starting from my left.

2 MS. BAILEY: Karen Bailey I'm the ANC
3 Commissioner this is my Single Member District.
4 My address is 2837 Chesapeake Street, N.W.

5 MS. PERRY: Karen Perry ANC 3-F, 3003
6 VanNess.

7 MS. FRIES: I'm Janet Fries I'm the
8 Applicant and I live at 5140 Linnean Terrance,
9 N.W.

10 MR. KEYS: Good morning I'm George Keys
11 I'm representing Ms. Fries my home address is
12 3012 McKinley Street, N.W.

13 CHAIRPERSON SORG: Thank you very much
14 Mr. Keys I believe we have a fairly full record
15 in this case and so you may present whatever
16 testimony you like.

17 MR. KEYS: Thank you Madam Chair, Members
18 of the Board. I think we can be very, very
19 brief. I think the record speaks for itself, I
20 think we're looking for relief under Section
21 202.10 for an accessory apartment. In looking at
22 the Zoning Commissions discussion is adoption of

1 the regulations that created this opportunity for
2 homeowners. I think we have come across a case
3 that is exactly what was in mind to create the
4 opportunity. We meet all the requirements
5 there's only one relief we're asking for. In
6 addition to 202.10 we're required to meet the
7 special exception requirements and I think we can
8 amply demonstrate our ability to do that. I'm
9 not going to belabor my statement rather I'm
10 going to rely on the record we've established and
11 the testimony of Ms. Fries. So I will ask Ms.
12 Fries to make her statement please.

13 MS. FRIES: Thank you very much. Just
14 briefly my home is on Linnean Terrance and it's a
15 single family home and I have quite a lot, I'm
16 very fortunate I have quite a lot of square
17 footage and its more than I need and I'm on a
18 large lot and the houses are nicely spaced so
19 there's quite a lot of street front. What I'm
20 proposing is that I take part of a basement area
21 to make a small apartment and the amount of space
22 that I'm discussing that I'm proposing be

1 transformed to an apartment is just over
2 600sqft., I think it's 615sqft of my overall
3 square footage is about 4000sqft. The proposed
4 apartment would not alter the footprint of the
5 house at all so from the outside the appearance
6 of the house would remain exactly the same. The
7 only point on which we are seeking an exception
8 is that the existing garage space which candidly
9 speaking has not had a car in it in quite a lot
10 time so this won't impact how I park. But the
11 garage would be transformed into a kitchen and
12 eating area. Nonetheless there is a driveway
13 that approaches the garage from the rear in which
14 two cars can park. The proposal would be that
15 the occupant of the apartment could park in that
16 driveway area and then as I mentioned there is
17 really quite a lot of on street parking because
18 of the placement of the houses and the size of
19 the lots. My own lot is 75ft across and so it's
20 possible to park, there's ample parking there.
21 So in January the first thing I did is I went
22 around and knocked on all my neighbors doors and

1 those that were home I spoke to and those that
2 weren't I left a letter saying that I was
3 proposing doing this apartment and if anybody had
4 any questions or issues about it to please
5 contact me and that was in January. Many of
6 neighbors spoke to me about it and seemed to
7 think that it was a perfectly reasonable proposal
8 and several offered to sign anything. So then my
9 next step was I contacted the ANC and they put me
10 on the calendar for April. In the meantime I sent
11 another letter around to all of my neighbors and
12 this time I asked them to sign and I got I guess
13 11 signatures and then I got another one and I
14 brought all those signed letters into the ANC
15 meeting and I made a presentation there and the
16 ANC of course is here and can speak but they did
17 pass a resolution 7 to 0 to 0 having no objection
18 to my proposal. I posted the signs, actually
19 today they've been up about a month so there's
20 been a lot of notice and discussion and I think
21 you'll notice there's nobody here opposed.

22 MR. KEYS: Ms. Fries let me ask you; will

1 the alterations that are proposed for the house
2 have any change in the appearance of the front of
3 the house as it faces the Linnean Terrance?

4 MS. FRIES: No change at all in the front
5 of the house. The apartment would be accessed by
6 an existing rear door a door that now goes into
7 the garage that would be the entrance and it's at
8 the side rear of the house so there would be no
9 visual change. That side of the house is visible
10 of course to the next door neighbor and I do have
11 a letter from that neighbor saying that she has
12 no issues with the apartment. I actually have
13 letters from neighbors on both sides and from
14 quite a number around and up and down the street.

15 MR. KEYS: Ms. Fries could I ask you how
16 many people currently live in your house?

17 MS. FRIES: Well right now there's just
18 myself and my daughter, my son is also a resident
19 but he is away at college so he's not there very
20 much.

21 MR. KEYS: Ms. Fries how many people do
22 you expect or intent to offer the accessory

1 apartment to?

2 MS. FRIES: Well I was hoping one but I
3 suppose if maybe a couple but I would think
4 probably just one.

5 MR. KEYS: Let me ask you when I visited
6 your home I found its location to be rather
7 unique. Could you just tell the Board what is
8 really behind your house and how unique a setting
9 it is?

10 MS. FRIES: Well behind at the rear of my
11 lot is an alley and then there's a strip of trees
12 and it's the, I guess it's a tributary of Rock
13 Creek Park so we're very fortunate to look out to
14 trees and this alley which is a little hard to
15 find cuts, it circles around back behind all the
16 houses. Many of the neighbors have garages, as I
17 do and driveways from the rear so there's some
18 parking behind and then of course ample on street
19 parking.

20 MR. KEYS: Madam Chair I think that's a
21 sufficient statement that we'd like to rely on
22 and if the Board has any questions for the

1 Applicant.

2 CHAIRPERSON SORG: Thank you Mr. Keys.

3 I'm going to ask you about the conditions in the
4 ANC resolution and in agreement with those if you
5 can address those if you are aware of them and so
6 forth?

7 MR. KEYS: Yes we're aware of the
8 conditions I think it's no more than what the
9 regulations require. Ms. Fries has no present
10 intent not to live in the house, there is no home
11 occupation presently authorized or envisioned. I
12 believe that there's no intent to occupy by more
13 than six persons.

14 CHAIRPERSON SORG: I agree with you for
15 the most part. In my opinion the only one of
16 these conditions that goes beyond really what the
17 Regs require in 202.10 is the third. That third
18 condition addresses that no home occupations
19 should be permitted on the premises and that's
20 something that you would agree to?

21 MS. FRIES: I have no issue with it. I'm
22 occupied outside the home and have no plan to

1 change that.

2 CHAIRPERSON SORG: Okay thank you very
3 much. Do other Board Members have questions for
4 the Applicant? Seeing none we'll move to the
5 Office of Planning.

6 MR. GOLDSTEIN: Good morning for the
7 record my name is Paul Goldstein. The Office of
8 Planning recommends approval of the Applicant's
9 request for special exception relief from Section
10 202.10 and 3104 to create an accessory apartment
11 within an existing single family dwelling at 5140
12 Linnean Terrace, N.W. For the record the subject
13 property is (Lot 69, Square 2032) and is zoned R-
14 1-B and is also located in the Forest Hills Tree
15 and Slope protection Overlay District. Accessory
16 apartments are permitted in this zone subject to
17 the satisfaction of certain conditions. As seen
18 in the OP report the proposed accessory apartment
19 meets all the related requirements except for
20 provision D which provides that the garage space
21 may not be converted into an accessory apartment
22 space. Section 202.10i however permits the Board

1 to waive that requirement and the Applicant has
2 demonstrated that a waiver is appropriate. That
3 concludes my presentation and I'm available for
4 any questions if you have any. Thank you.

5 CHAIRPERSON SORG: Thank you Mr.
6 Goldstein. I thought that your report was very
7 thorough and I just had one question. In
8 "Exhibit 24" which is from April 25th from the
9 Applicant. They discuss the required parking a
10 little bit whether or not there's one or two
11 spaces required can you tell me just your opinion
12 on that?

13 MR. GOLDSTEIN: Sure I had a discussion
14 with the Zoning Administrator about that
15 question. He actually said that the accessory
16 apartment would not have a required parking space
17 so it would not require a parking space so that
18 one space is sufficient for the dwelling with the
19 accessory apartment as a whole.

20 CHAIRPERSON SORG: Okay thank you do other
21 Board Members have questions for the Office of
22 Planning?

1 MR. SELFRIDGE: Thank you Madam Chair,
2 thank you Mr. Goldstein. I just want to point
3 out Section 4 in the Office of Planning Report it
4 says that we're requesting a waiver from 202.10E
5 and that should probably say D so I don't think
6 it impacts what we're doing right now and we know
7 what we're trying to do but it should probably be
8 corrected for the record.

9 MR. GOLDSTEIN: Thank you for the
10 clarification I think I got it right in one place
11 and wrong in another.

12 CHAIRPERSON SORG: Any further questions
13 for the Office of Planning? Seeing none does the
14 Applicant have any questions for the Office of
15 Planning? No. So we will move to any persons in
16 the audience individuals in support or in
17 opposition. Seeing none we will go to our
18 representatives from the ANC, welcome.

19 MS. PERRY: Hi we'll be quick you have a
20 copy of our resolution I believe. It's nice to
21 be here for a change in support of something.
22 Commissioner Bailey is with me she's new to our

1 ANC and this is her first time at a BZA hearing.
2 As you can see the R-1-B is zoned for high
3 density residential and we believe that this is
4 an appropriate use an accessory apartment. There
5 were 11 letters that we received in support.
6 Four neighborhood neighbors did express some
7 concern for just not setting a precedent or
8 parking but we didn't see that as a problem.
9 Commissioner Bailey visited the site and we did
10 put the conditions in but those were conditions
11 that were in the Regs including the third one
12 202.10H the home occupancy that was in the Regs
13 at least in my copy of them. We did vote 7-0-0
14 and that's it.

15 MS. BAILEY: I just wanted to add one
16 thing that in terms of neighborhood support that
17 in addition to the Applicant reaching out to
18 everybody that I also personally sent letters to
19 everyone recognizing that if people were opposed
20 they might not want to come forward to the
21 neighbor and I did only hear from four people not
22 supporting it. I'm assuming if they didn't

1 return they wanted to support it. I did hear
2 from the one neighbor I believe on the east side
3 of the home her right next door neighbor who did
4 support it, so I just wanted to add that I also
5 reached out as well.

6 CHAIRPERSON SORG: Thank you Ms. Perry
7 and Ms. Bailey I appreciate you coming down here.
8 Actually your point is good we had a little bit
9 of a discussion and I want to go back to Mr.
10 Goldstein on this one. On 202.10H whether or not
11 that portion of the Regs disallows home
12 occupation at all or just establishment of
13 apartments in the premises where there is one
14 already?

15 MR. GOLDSTEIN: I can see it's a very
16 close reading of it what you gave it. It almost
17 seems to suggest that as long as it's not there
18 already on the premises that maybe after the
19 fact. I don't know it really hasn't come up.
20 I'm assuming if they wanted a home occupation
21 there would be probably some BZA relief or some
22 type of special exception that they would need so

1 it really doesn't concern me that much. Yeah I
2 kind of tend to agree that the ANC took sort of a
3 clear, just a general reading of it for home
4 occupation. Their conditions really are in a
5 sense just restating what the criteria are
6 anyway. I'm not really sure that there would
7 need to be a specific call out of these in order
8 the Applicant has met the conditions of the
9 special exception.

10 CHAIRPERSON SORG: Okay thank you I just
11 wanted to see if that was your reading also and
12 it sounds good to me. Do any Board Members have
13 questions for the ANC? Seeing none we will go
14 back to the Applicant for any closing statements
15 or remarks.

16 MR. KEYS: Yes Madam Chair, Members of
17 the Board. I think that the record and Ms. Fries
18 testimony and the ANC support demonstrates that
19 we can comply with 202.10 and meet all of the
20 requirements for the special exception relief.
21 We can also meet special exception standards by
22 showing that both the Zoning Commission and its

1 remarks adopting the regulations as well as the
2 comprehensive plan all envision granting a degree
3 of flexibility to homeowners to adapt their homes
4 to various situations including accessory
5 apartments. If that can be done in compliance
6 with the requirement that you have a minimal
7 impact on the character of the neighborhood and I
8 think this is a perfect situation by the location
9 of this house, the side of the lots, the lack of
10 street congestion to allow an increase in density
11 in this one house by adding an accessory
12 apartment. I would encourage the Board to think
13 about bench relief a summary order for this case
14 so that she can move ahead with her plans as
15 quickly as possible and get this apartment done
16 by the fall.

17 CHAIRPERSON SORG: Thank you very much
18 Mr. Keys and thank you to the Applicant. I think
19 that we've got a very full record here and her
20 testimony so I feel that we can go ahead and
21 conclude this hearing and move on into
22 deliberations on this case. If there are no

1 comments from that I can go ahead and start us
2 off which I will do. So what we're looking at
3 here, in my opinion a very straight forward case
4 that has a full gamete of community support for a
5 special exception relief to establish an
6 accessory apartment within single family home. I
7 think that the Applicant, I'll incorporate the OP
8 Report in "Exhibit 26" for the record and just
9 mention that I think the Applicant has really
10 gone through and demonstrated that they meet very
11 well all of the (subsections of 202.10). Clearly
12 in Section A the lot area does exceed the
13 minimum. In Section D the gross floor area is
14 more than double the requirement there. In
15 Section C I think I recall from the case file
16 that the accessory unit occupies maybe somewhere
17 in the neighborhood of 15% or less of the gross
18 floor area of the house. Section D is the piece
19 of the regulation that the Applicant would like
20 to be waived as per Section I of the same
21 regulation and I think they've demonstrated that
22 waiving the section regarding conversion of

1 garage space has been met in this case as well.
2 In Section E their not creating any new entrances
3 and it also does not face the street the entrance
4 to the accessory apartment. The Applicant has
5 stated in regards to (inaudible) that she will
6 continue to occupy the principle dwelling and
7 both of the statement as well as in testimony in
8 regards to Section G the Applicant stated that
9 fewer than 6 people would be residing in the
10 property. In Section H we had a little bit
11 longer discussion of that and the Applicant
12 testified that there would be no home occupation.
13 Also I think that they've met the requirements
14 in Section 3104 that since there's no change in
15 the exterior of the home the accessory apartment
16 takes up a rather small amount of the square
17 footage and based on the fabric and character of
18 the neighborhood as well as the community support
19 which is demonstrated in "Exhibit 25" which is
20 ANC 3-F resolution and support as well as
21 "Exhibit 24" submitted by the Applicant which
22 contains something like 15 letters in support of

1 neighbors. These are big lots so that's like a
2 lot of area I feel like. So that being said I
3 would be in support of approving this
4 application. As per our discussion, and this is
5 something I would like other Board Members to
6 chime in on, regarding the conditions in the ANC
7 resolution. I think both OP and the ANC
8 Representatives that are here today have
9 testified that they see these are conditions are
10 really in the regulations and by requesting this
11 special exception the Applicant agrees of course
12 to abide by the regulations. So should we go
13 ahead and approve this application I would be in
14 favor of approving it without conditions. We
15 like to keep our approvals without redundancies
16 of those requirements that are already laid out
17 in the Chapter 11 Regulations. That being said I
18 open up for further deliberations.

19 MR. HINKLE: Thank you Madam Chair I
20 agree with your analysis it was pretty thorough.
21 In regards to the recommended conditions I also
22 agree that they're already in the regulations and

1 perhaps they don't need to be in the order.

2 CHAIRPERSON SORG: Thank you Mr. Hinkle.

3 Anybody else? If not I will go ahead and submit
4 motion to approve Application No. 18206 to create
5 an accessory apartment within an existing single
6 family dwelling at 5140 Linnean Terrace, N.W.
7 (inaudible) 202.10 and waiving the provision
8 under 202.10 D and under Section 3104. A motion
9 has been made is there a second?

10 MR. JORDAN: Second.

11 CHAIRPERSON SORG: A motion has been made
12 and seconded, all those in favor say aye.

13 CHORUS: Aye.

14 CHAIRPERSON SORG: Opposed. Mr. Moy can
15 you please read back the vote?

16 MR. MOY: Yes Madam Chair with pleasure.
17 The staff would record the vote as 4 to 0 to 1
18 this is on the motion of Chairperson Sorg to
19 approve the application from a special exception
20 relief under 202.10 and waiver of Section 202.10
21 (sub D) per the standards and 202.10i. Seconded
22 the motion Mr. Jordan in support of the motion

1 Mr. Hinkle and Mr. Selfridge, there are no other
2 participating members so again the vote is
3 approved 4 to 0 to 1.

4 CHAIRPERSON SORG: Thank you very much
5 Mr. Secretary. That concludes our morning. But
6 before I say that we'll ask for a summary order
7 seeing that there's no opposition in this case.
8 Good luck with your project and we will adjourn
9 and be back at 1pm. Thanks very much.

10 **Afternoon Session**

11 CHAIRPERSON SORG: This meeting will
12 please come to order. This is the May 10th Public
13 Hearing of the Board of Zoning Adjustments for
14 the District of Columbia. My name is Nicole
15 Sorg, Vice Chairperson. Joining me today to my
16 right is Representative of the NCPC Jeffrey
17 Hinkle, Representing the Zoning Commission to my
18 far left Mr. Selfridge and to my near left
19 Mayoral Appointee Lloyd Jordan. Copies of today's
20 meeting agenda are available to you and are
21 located to my left in the wall bin near the door.
22 Please be advised this proceeding is being

1 recorded by a court reporter and is also being
2 webcast live. Accordingly we must ask that you
3 refrain from any disturbing noises or actions in
4 the hearing room. When presenting information to
5 the Board please turn-on your microphone and
6 speak into it, stating your name and home
7 address. When you are finished speaking please
8 turn-off your microphone so that your microphone
9 is no longer picking up sounds or background
10 noise. All persons planning to testify either in
11 support or in opposition are to fill out two
12 witness cards these cards are located to my left
13 on the table near the door and are also on
14 witness tables. Upon coming forward to speak to
15 the Board please give both cards to the court
16 reporter sitting to my right. The order of
17 procedures for special exceptions and variances
18 are is: 1. Statement of the Applicant and
19 Applicant's Witnesses. 2. Parties and persons in
20 support. 3. Parties and persons in opposition. 4.
21 Government Reports including Office of Planning
22 and Department of Transportation, Office of the

1 State Superintendent for Education and the
2 Department of Public Works. 5. Reports from the
3 ANC. 6. Rebuttals and closing statements of the
4 Applicant. Pursuant to Section 3117.4 and 3117.5
5 the following time constraints will be
6 maintained. The Applicant/Appellant persons and
7 parties except an ANC in support including their
8 witnesses will be given 60 minutes collectively.
9 The Apelles persons and parties except an ANC in
10 opposition including witnesses will be given 60
11 minutes collectively. Individuals will be given
12 3 minutes and associations or organizations will
13 be given 5. These time restrictions do not
14 include cross examinations or questions from the
15 Board. Cross examination of witnesses is
16 permitted by a party or an Applicant in the ANC
17 within which the property is located is
18 automatically a party in a special exception or
19 variance case. Nothing prohibits the Board from
20 placing reasonable restrictions on cross
21 examination including time limitations or
22 limitation on the scope of cross examination.

1 The record will be closed at the conclusion of
2 each case except for any materials specifically
3 requested by the Board. The Board and the Staff
4 will specify at the end of each hearing exactly
5 what is expected and the date when the material
6 must submitted to the Office of Zoning. After the
7 record is closed no other information will be
8 accepted by the Board. The Sunshine Act requires
9 that a public hearing on each case be held in the
10 open before the public. Pursuant to Section 405B
11 and 406 of the Open Meeting Amendment Act of
12 2010, the Board may consistent with its rules and
13 procedures and the Open Meeting Amendment Act
14 enter into closed meeting or closed emergency
15 meeting on a case for purposes of seeking legal
16 counsel in a case per Section 405B4 and or
17 deliberating on a case pursuant to Section 405B-
18 13 of the law but only after providing the
19 necessary public notice and taking a roll call
20 vote. The decision of the Board in these
21 contested cases must be based exclusively on
22 public record. To avoid any appearance to the

1 contrary the Board requests that persons present
2 not engage the members of the Board in
3 conversation. Please turn off all beepers and
4 cell phones at this time as to not disturb these
5 proceedings. Any individuals wishing to testify
6 today please rise to take the oath. Mr.
7 Secretary will you please administer the oath.

8 MR. MOY: Do you solemnly swear or affirm
9 that the testimony you're about to present in
10 this proceeding is the truth the whole truth and
11 nothing but the truth? You may consider yourself
12 under oath.

13 CHAIRPERSON SORG: The Board will not
14 consider any preliminary matters. Preliminary
15 matters are those which relate to whether a case
16 will or should be heard today such as request for
17 postponement or withdrawal or whether proper and
18 adequate notice of the hearing has been giving.
19 If you are not prepared to go forward with the
20 case today or if you believe the Board should not
21 proceed now is the time to raise such a matter.
22 Mr. Secretary do you have any preliminary

1 matters?

2 MR. MOY: Madam Chair at this time the
3 Staff is not aware of any preliminary matters.

4 CHAIRPERSON SORG: Okay thank you, then
5 let us precede and call the first case.

6 **Application No. 18207**

7 MR. MOY: Good afternoon Madam Chair,
8 Members of the Board. The first case for Board
9 Action is Application No. 18207 this is the
10 application of 4926 Wisconsin Avenue, LLC,
11 pursuant to 11 DCMR 3104.1 for a special
12 exception to allow the continued use of a parking
13 lot. This was last approved by BZA Order No.
14 17151 under Section 213 in the R-2 District at
15 premises in the rear of 4926 Wisconsin Avenue,
16 N.W. Property is located in (Square 1671, Lot
17 30).

18 CHAIRPERSON SORG: Thank you Mr. Moy it
19 looks like we have a party status request in this
20 case which I think we want to address prior to
21 proceeding with the Applicant's case. I'll see
22 if Ms. Mary Quirk is in the audience. If you

1 could come forward to the witness table. First
2 let's have the Applicant introduce himself, state
3 your name and home address for the record please.

4 MR. GELFORD: Good afternoon my name is
5 Ken Gilfard; my home address is 7511 Elmore Lane,
6 Bethesda, MD 20817.

7 CHAIRPERSON SORG: I believe you
8 submitted a letter in our "Exhibit 5" that
9 authorizes you to represent the property owner.

10 MR. GELFORD: That is correct.

11 CHAIRPERSON SORG: So the first thing
12 that we're going to do is we need to address the
13 party status application. So Ms. Quirk we
14 received your party status request and if you can
15 just state what, the party status is different as
16 you may understand from an individual who wishes
17 to testify in opposition. This requires a
18 specific legal interest or a specific effect by
19 the request.

20 MS. QUIRK: I'm the owner occupant of a
21 very close neighboring house.

22 CHAIRPERSON SORG: So as a party in this

1 case the difference there is that in addition to
2 giving testimony you would have the opportunity
3 to cross examine any witnesses and question the
4 Applicant is that something that you would like
5 to go forward on.

6 MR. QUIRK: I just came early and
7 expressed by concerns to Mr. Gilford but I
8 comment him for trying to work with the
9 neighbors.

10 CHAIRPERSON SORG: So you'd like to go
11 ahead as a party or as an individual?

12 MS. QUIRK: As an individual.

13 CHAIRPERSON SORG: So then what that
14 means is you will withdraw your request for party
15 status and then you can testify as an individual.
16 I just want to make you aware you can proceed
17 either way. I just wanted you to understand the
18 difference.

19 MS. QUIRK: I'm used to the other one
20 where they present first, seven years ago when we
21 were here.

22 CHAIRPERSON SORG: It sounds to me like

1 you probably were an individual testifying so if
2 you would like to proceed in that way also then
3 what you're going to be doing it you're going to
4 withdraw your party status request and instead
5 when we get to the individuals in support of
6 opposition then you'd like to testify. Okay
7 great that means I will have you hold off for a
8 bit, we'll let the applicant go forward and then
9 we'll call you up when it's your turn.

10 MS. QUIRK: Thank you.

11 CHAIRPERSON SORG: Thank you. Okay Mr.
12 Gilfard.

13 MR. GILFARD: Good afternoon again, for
14 the record my name is Kenneth Gilfard I'm the
15 attorney for 4926 Wisconsin Avenue, LLC., which
16 is the owner of the parking lot which is at the
17 rear of 4926 Wisconsin Avenue. Nick D'Otis the
18 property manager was to appear with me today but
19 an unavoidable conflict occurred. He has asked
20 me to proceed in his absence to the extent that
21 he is needed here I would request that we keep
22 the record open and allow him to appear but it

1 may well be that his presence is not needed for
2 any questioning. We're here today to request
3 that the Board of Zoning Adjustment grant a
4 special exception allowing the Applicant to
5 continue operating a 27 space parking lot at the
6 rear of 4926 Wisconsin Avenue. The principles of
7 the Applicant which at the time were the owners
8 of the property back in 2004 secured a special
9 exception which allowed for the parking lot to
10 operate. That special exception had a life of 7
11 years and so we're back here in 2011 to seek
12 another special exception. The existing special
13 exception allowed for parking in the lot Monday
14 through Friday from 7 to 7, Saturday from 9 till
15 7 and Sunday from 11 till 6. We are seeking the
16 same terms and conditions except in terms of this
17 special exception we would request and have
18 applied for the right to allow parking in the lot
19 from 7pm to 11:30pm Monday through Saturday for
20 valet parking for local restaurants. Some of the
21 local restaurants have indicated an interest for
22 that. If in the future there's an opportunity to

1 do it and you'd like to have the ability to do
2 it. We understand that any valet parking would
3 have to be done pursuant to D.C. Regulations and
4 that would be something that obviously the
5 potential restaurant owner would undertake. At
6 this time we do not have any restaurant's ready
7 to move forward but there has been some interest
8 and so that's the reason for the request today.
9 In connection with the valet parking as I've said
10 there's been some interest in the past raised by
11 local restaurants. We believe the neighboring
12 homes would be benefited by it because currently
13 when some of the restaurants in the neighborhood
14 have limited parking out front of the
15 restaurant's the patrons end up parking in the
16 residential neighborhoods which causes problems
17 for some of the residential home owners when they
18 look for spaces. The valet lot option would
19 alleviate that concern. Similarly any restaurant
20 patrons wouldn't have to go back to the
21 residential neighborhoods to pick up their cars
22 after dinner but rather they would just have the

1 car retrieved by the valet and so there would be
2 less disruption to some of the residential
3 neighbors. As additional reasons in favor of it
4 this added parking feature might lead to
5 additional business for some of the restaurants
6 as patients' maybe more likely to come to the
7 restaurants if it was easier to get in and out
8 and not have to search for parking in residential
9 areas which would lead to more business for the
10 restaurants and hopefully cause D.C. Government
11 to have some advantages to through additional tax
12 revenues and potential employment through
13 workers. To get to the specific requirements of
14 Section 213 I'm happy to go through those or I
15 can defer if you prefer I not go through those
16 point by point. They are currently in the record
17 that has been submitted and I'm happy to either
18 walk through them one at a time or just refer to
19 the filing in the statement of support where I've
20 set forth each of the requirements being met.

21 CHAIRPERSON SORG: It's up to your
22 preference. I think in that regard the record is

1 pretty full so that's up to you.

2 MR. GILFARD: Okay in light of the fact
3 that the record is relatively full and I would
4 refer you to the record to confirm that all
5 requirements under Section 213 for a parking lot
6 in the R-2 Zone have been met. The other couple
7 of points I would like to raise is that we did
8 meet with the ANC and so at their favorable
9 recommendation for the continued special
10 exception including the valet parking and there
11 should be in the file a unanimous resolution that
12 was issued by ANC-3-E in support. The added a
13 restriction where by the applicant would
14 discourage use of the 43rd Street alley by non-
15 valet users and specifically not permit the valet
16 users from using 43rd Street alley for purpose of
17 ingress and egress. The Applicant accepts those
18 additional conditions and would have no problem
19 having those conditions added to the list of
20 existing conditions that were enacted in 2004 by
21 the BZA. In addition I would like to point out
22 that the Office of Planning has issued a

1 favorable recommendation. I'm sure Steve Mordfin
2 will speak for the detail to that but I did want
3 to reference that that has also been entered into
4 the record. So in conclusion for all of the
5 above reasons I would request that that special
6 exception be granted under the same terms and
7 conditions as in the 2004 special exception
8 except that the Applicant be allowed to offer
9 valet parking to local restaurants from 7pm to
10 11:30pm Monday through Saturday.

11 CHAIRPERSON SORG: Thank you very much.
12 Just to reiterate the parking during the
13 additional hours would only be available to the
14 valet correct?

15 MR. GILFARD: That's correct.

16 CHAIRPERSON SORG: Okay great I don't
17 have any other questions. Do other Board Members
18 have questions for the Applicant? Seeing none,
19 let's go to the Office of Planning.

20 MR. MORDFIN: Good afternoon I'm Stephen
21 Mordfin with the Office of Planning. The subject
22 application is in conformance for the criteria

1 for the granting of a special exception to permit
2 a parking lot it's located within 200ft. of a
3 commercial district, it's separated only by an
4 alley from the commercial district, it would
5 create no objectionable conditions because access
6 of the lot is controlled and evening access would
7 be by the valet operator only. To ensure that
8 the lot would not adversely affect the
9 neighborhood OP recommends that the valet service
10 not use the alley from 43rd Street to access the
11 lot and that a sign be posted within the lot
12 stating that all access should be from the alley
13 from Ellicott Street or Fesitin Street. Also it
14 would provide off street parking for local
15 businesses reducing the need for customers to
16 park on surrounding residential streets. No
17 overnight or long term parking would be
18 permitted. The lot is paved; a brick wall and an
19 iron railing prevent vehicles from extending over
20 the lot lines. No other use would operate from
21 the site. Lighting would continue to be confined
22 to the surface of the lot. The lot would be

1 cleaned on a weekly basis and landscaping is
2 previously approved by the Board would continue.
3 The Office of Planning recommends that the
4 application be approved subject to the same
5 conditions as previously approved by the Board
6 with the following modifications. 1. All
7 conditions repeating special exception criteria
8 are deleted as these must be conformed to the
9 application as approved by the Board. 2. The
10 lot is permitted to operate as valet only between
11 the hours of 7pm and 11:20pm Monday through
12 Saturday. 3. The valet does not access the
13 parking lot from 43rd Street. 4. The Applicant
14 should post and maintain a sign indicating that
15 all ingress and egress to the lot should be from
16 either Ellicott Street or Festin Street, N.W.
17 Thank you.

18 CHAIRPERSON SORG: Thank you very. Do
19 Board Members have any questions for the Office
20 of Planning? Seeing none, does the Applicant
21 have any questions for the Office of Planning?

22 MR. GILFARD: No I do not.

1 CHAIRPERSON SORG: Okay thank you very
2 much. At this point we can invite Ms. Quirk back
3 up to the table as well as any other individuals
4 in support or opposition to the application.

5 Thank you very much if you could introduce
6 yourself again and home address for the record.

7 MS. QUIRK: Mary K. Quirk, Owner occupant
8 of 4228 Fesiden Street, N.W. D.C. 20016.

9 CHAIRPERSON SORG: Great and then we can
10 have 3 minutes and go ahead please with your
11 testimony.

12 MS. QUIRK: Well I want to thank Mr.
13 Gilford for working with us I just told him some
14 immediate and past concerns that he was unaware
15 of. I want to thank the BZA because I came down
16 here with no check and no credit card and they
17 helped me anyway. In this day and age that they
18 couldn't accept cash I thank them in being so
19 nice in helping me to look over the file. My
20 fault is with the ANC that has not been posting
21 public meetings, or their minutes, no agendas. I
22 will take this up with the ANC. I just received

1 an email yesterday from our ANC Commissioner I
2 have given Mr. Gilfard a copy about some
3 concerns. Last Monday night there was a serious
4 fire almost two alarm on Fesiden at the alley and
5 the parkers are supposed to observe the posted
6 hours and were caught red handed not leaving
7 before 7 under the existing rules. So this has
8 happened more than once but they really got
9 caught red handed when the hook and ladder
10 blocked the entrance and egress. So Mr. Gilfard
11 and the ANC were not aware of some of these
12 concerns. Car alarms, you know just generic
13 things. It was explained to me that the valet
14 parking application is separate from this. The
15 intent of the lot and the limited hours as they
16 are was to give a buffer to the residences of
17 which I'm probably 40 feet away. Also not using
18 the 43rd Street alley which they have been which
19 is right behind my house which almost seems like
20 a street sometimes so that's all been brought up.
21 The February 10th meeting which I found out from
22 hearsay which was not posted publicly on the ANC

1 website brought up a lot of the concerns which
2 Mr. Gilfard and to their credit worked on sending
3 letters out to certain neighbors and to my horror
4 I discovered that many people that are not living
5 in their houses are getting homestead exemptions
6 and if the District wants to make money they need
7 to get after these people. Fesiden Street has
8 been used for years, before my time, and still is
9 wide enough to accommodate both sides of the
10 street parking. I know the District may be
11 Glover Park more so than my area is looking for
12 areas where legal parking can be and they need to
13 reopen Fesiden Street to both sides of the street
14 there's plenty of parking. I don't know how much
15 money or who would make the money on the valet
16 deal but the limited hours have the intent of
17 giving us a buffer because of the bad experiences
18 in the past of shootings and fires and drug
19 dealings and all kinds of bad things that
20 happened under the previous owner Kashard. I
21 wanted to mention that around 2006 you would note
22 to confirm that date 4926 Wisconsin was vacant

1 for some months so the parking lot gate was left
2 up so that any and all could use it. So if 4926
3 becomes vacant again I guess that's what will
4 happen again I don't know. I just alerted Mr.
5 Gilfard who wasn't aware of these things because
6 I would rather try to work with them than
7 surprise them in this hearing so we just chatted
8 briefly. Again my fault with the 7 o'clock is
9 your tenants are obeying so hit them with a stick
10 or whatever you're supposed to do throw them out
11 whatever. So how are the valets going to get in
12 there if they're still in there? Anyway I just
13 wanted to keep it short and sweet I thank you for
14 giving me this time on behalf of me and some of
15 the other neighbors who are owner occupants who
16 have been there awhile.

17 CHAIRPERSON SORG: Thank you very much
18 Ms. Quirk I appreciate your coming down and I
19 really appreciate the way that you as someone who
20 has concerns in the community have been working
21 with the Applicant in a fashion that's based on
22 dialog I appreciate that.

1 MS. QUIRK: Well it's because of my house
2 and the firemen coming into my house that the
3 house next door was saved and you can't miss this
4 house and the house fire that occurred. I'm
5 surprised Mr. Gilfard hasn't noticed the smell
6 from the fire. Like I say they were caught red
7 handed by the fire trucks and I'm glad those fire
8 trucks could get through that alley and be there.
9 Thank you very much for your time and thank you
10 to the ladies in the reception who helped me. In
11 this modern day and age of no credit card and no
12 check I was able to read the files. I still want
13 to pay for the copies I owe but thank you very
14 much for being so customer service oriented.
15 Thanks to Mr. Gilfard again.

16 CHAIRPERSON SORG: So based on Ms.
17 Quirk's testimony I just wanted to elicit a
18 couple of comments from you Mr. Gilfard. There
19 are a few elements just for the record it sounds
20 like you guys had an outside conversation. A
21 couple of enforcement issues, regarding hours,
22 enforcement of the security measures which are in

1 the conditions of the current special exception.
2 That's something that sounds like you discussed
3 so if you can address that a little bit. My
4 first comment would be to share with Ms. Quirk
5 the property managers contact information which
6 is posted at the lot and as you may remember from
7 2004 we did meet and so if there are any
8 enforcement issues I would suggest that you
9 contact the property manager and I can share that
10 information with you so he can immediately move
11 on it. These issues that were raised today were
12 new to me. I had in fact sent a letter at the
13 request of the ANC to all the local property
14 owners that lived around the parking lot asking
15 about concerns including Ms. Quirk I did check
16 with one of the recipients of the letter so all
17 of this information I received today was news to
18 me but I'm happy to address it. We want to keep
19 the neighbors happy and the property manager if
20 he was here today would be happy to second that
21 and testify to that.

22 CHAIRPERSON SORG: Do other Board Members

1 have questions for Ms. Quirk or Mr. Gilfard based
2 on her testimony?

3 MR. SELFRIDGE: Thank you Madam Chair so
4 Ms. Quirk your satisfied that's what I'm trying
5 to understand. Are you satisfied that a process
6 is in place to get you where you're comfortable?

7 MS. QUIRK: Me and other owner occupants
8 are not pleased that the hours would be extended
9 especially if the contact information of the
10 property manager is a recording an answering
11 machine. We're not happy with the ANC not
12 updating their official website since January and
13 I hope I can give a copy of that to everybody.
14 They are not supposed to have secret meetings
15 it's supposed to be on their official website. I
16 am happier to work with people who aren't
17 absentee and the ANC is absentee. I didn't know
18 that they wrote a letter, I'm glad they addressed
19 the 43rd Street alley and I don't know. Like you
20 say it's up to another business to ask for the
21 valet parking not and enforcement and all of that
22 is not before us today.

1 MR. SELFRIDGE: But you feel like you
2 have a good dialog that you can move forward and
3 work with Mr. Gilfard.

4 MS. QUIRK: I don't know about good but
5 started.

6 CHAIRPERSON SORG: Are there any other
7 Board questions? I have one other question, Ms.
8 Quirk you had just mentioned that you had tried
9 to contact someone in an event of an evening
10 infraction or issue that you had. Would being
11 confident of a response from the owner make you
12 and other folks comfortable with the extended
13 hours?

14 MS. QUIRK: Well who in the District is
15 the enforcer? That would be my other question?
16 DCRA? DPW? DDOT?

17 CHAIRPERSON SORG: What I'm trying to get
18 at is what Mr. Selfridge was sort of getting at
19 is a dialog between the neighbors and the
20 ownership.

21 MS. QUIRK: Well in the February meeting
22 one of the things was that they have a meeting

1 with the neighbors and that's what used to happen
2 when we were stuck with that parking lot and all
3 of those problems. The Kashards finally had to
4 meet the neighbors they were the slum lords that
5 were running it 24 hours or not running it or
6 whatever. So at any rate it's a start let's put
7 it that way. It would be better to have a number
8 where somebody really answers the phone rather
9 than a voicemail. Having had the experience of
10 the fire and not being able to contact the
11 landlord other than getting answering machines to
12 try to get the property secured I'd just rather
13 like to know where there's a real human being
14 answering the phone. I'm sure Mr. Gilfard can
15 help me.

16 MR. GILFARD: The issue of being able to
17 contact the owner has come up in the past and
18 there is a phone number for the property manager.
19 We did discuss this at the ANC hearing and the
20 property manager had informed me that he had not
21 gotten any phone calls. So I would just ask it's
22 an ongoing open business so if it's after

1 business hours and I would be confident that you
2 will get an immediate return phone call. If
3 there's a need for meetings that issue also came
4 up at the ANC meeting and the property manager
5 indicated that he would be happy to meet with
6 people but to date he hasn't had any request so
7 that hasn't taken place.

8 MS. QUIRK: Thank you.

9 CHAIRPERSON SORG: If there are no
10 further questions for Ms. Quirk we'll move on to
11 if there are any representatives of ANC 3-E in
12 the audience, seeing no one I will reference for
13 the record our "Exhibit No. 23" resolution from
14 ANC 3-E that is past by a vote of 5 to 0 fulfills
15 our requirements for great weight in support of
16 this application in referencing various
17 conditions. That being said Mr. Gilfard we can
18 go to you for any closing remarks.

19 MR. GILFARD: Thank you in closing all I
20 would ask is that the existing terms and
21 conditions of the special exception being
22 extended for another period of 7 years with the

1 additional right to allow valet parking in the
2 evening Monday through Saturday as previously
3 stated any grant of a specific right to park
4 would have to come through the appropriate
5 channels which I understand include both review
6 by the local ANC as well as the applicable D.C.
7 Governmental Offices. So there will be a process
8 before any valet parking were to occur insure
9 public safety and the like. In connection with
10 the hours of the valet we would have for Monday
11 through Saturday from 7pm to 11:30pm and that
12 would conclude my final statement thank you.

13 CHAIRPERSON SORG: Thank you very much.
14 Okay with that we will close this portion of the
15 hearing and move into deliberation on this case.
16 I can start us off. This is a special exception
17 to continue a use that has been in operation in t
18 his location since 1989. It seems to me that the
19 requirements, I would reference the OP report in
20 "Exhibit 26" and the Sections under 213.2 it
21 seems to me are pretty well met and set out. It
22 sounds like from the testimony we got today as

1 well as from the presence of an ANC resolution
2 and support that the current ownership of this
3 facility seems to be more responsive and seems to
4 be engaged in being responsive in the community
5 which I think that this type of use so close to
6 residential area is very important. I think that
7 they've shown that the objectionable traffic
8 conditions have not resulted in those that have
9 with regard to people driving down the 43rd Street
10 alley they've committed in their testimony and in
11 their statements in the file that they as well as
12 offering a condition should the application be
13 approved to work hard to discourage that unwanted
14 traffic that's going into the residential
15 neighborhood. I think that for my part I could
16 come down in favor of this application. With
17 regard to the conditions recommended by the
18 Office of Planning what I might do because it
19 sounds like as I mentioned they are pretty close
20 to a residential neighborhood I might suggest to
21 my fellow Board Members modifying condition
22 number 12 in which the Applicant is in a sort of

1 nebulous way asked to have an ongoing liaison
2 with ANC 3-E. I might ask that they appear once
3 annually to address any concerns at the ANC so
4 that those people that may attend the ANC but not
5 be aware of contacting the owners can have set
6 access to them for any concerns that may arise.
7 So that being said I'll open for further
8 deliberations from any Board Members.

9 MR. HINKLE: Thank you Madam Chair just
10 in terms of modifying condition number 12 was
11 that maintain and ongoing lesion and meet
12 annually with the ANC or was it one or the other?

13 CHAIRPERSON SORG: I would say both would
14 be my idea.

15 MR. HINKLE: I could support both.

16 CHAIRPERSON SORG: Any additional
17 deliberation?

18 MR. SELFRIDGE: No Madam Chair I'm fine
19 with moving forward with this.

20 CHAIRPERSON SORG: Okay that being said I
21 will submit a motion to approve Application No.
22 18207 for 4926 Wisconsin Avenue, LLC. pursuant to

1 Section 3104.1 for a special exception to allow
2 the continued use of a parking lot under Section
3 213 in R-2 District at the rear of 4925 Wisconsin
4 Avenue. I will incorporate the conditions
5 suggested on page 6 recommendations in the Office
6 of Planning Report and modify condition number 12
7 to read the Applicant shall maintain through its
8 designated representative an ongoing liaison with
9 Advisory Neighborhood Commission 3-E and appear
10 once annually at regularly scheduled 3-E meetings
11 and so on and so forth.

12 MR. GILFARD: Madam Chair if I may add
13 one brief comment before votes taken. That
14 additional requirement is fine with the
15 Applicant. One minor technical correction I
16 notice the address of the property being referred
17 to at times as 4925 when in fact it is 4926 is
18 the actual address on the application that I
19 filed and on all the postings.

20 CHAIRPERSON SORG: Okay thank you. A
21 motion has been made is there a second?

22 MR. SELFRIDGE: Second.

1 CHAIRPERSON SORG: A motion has been
2 made and seconded. All those in favor say aye.

3 CHORUS: Aye.

4 MR. MOY: Staff would record the vote as
5 4 to 0 to 1 this is on the motion of Chairperson
6 Sorg for special exception relief under Section
7 213. Seconded the motion is Mr. Selfridge, also
8 in support of the motion Mr. Hinkle and Mr.
9 Jordan. We have one Board Member not
10 participating with us today. So again the vote
11 is 4 to 0 to 1 in approval with conditions as the
12 Chair stated.

13 CHAIRPERSON SORG: Thank you Mr. Moy and
14 we can call for a summary order in this case.

15 MR. MOY: Yes thank you Madam Chair.

16 CHAIRPERSON SORG: When you're ready
17 let's call the next case. Thank you very much.

18 **Application No. 18161**

19 MR. MOY: The second case for the
20 afternoon session Madam Chair is Application No.
21 18161. This is the application of Valeri A.
22 Byrd, pursuant to 11 DCMR 3103.2 for a variance

1 from the non-conforming structure provisions
2 under (Subsection 2001.3). This is to allow a
3 second story sunroom addition on top of an
4 existing detached garage serving an existing one
5 family row dwelling in the R-4 District at
6 premises 1245 G Street, N.E. the property is
7 located in (Square 1005, Lot 41).

8 CHAIRPERSON SORG: Is the Applicant
9 present in the audience for this application?
10 Have we heard from the Applicant?

11 MR. MOY: Staff is not aware of staff
12 assumes that the Applicant would have present for
13 the afternoon. I have not heard any
14 communication of him not being present. Staff
15 would suggest that first of all there have been
16 two previous postponements because of reasons
17 dealing with the Fair Housing Act so this I would
18 think for this application relief would be; it
19 would be the first time that the Applicant's not
20 present. I would suggest and you might want to
21 hear from OHE whether the Board would consider
22 postponing this hearing to a future date at the

1 Board's convenience and then Staff of course
2 would try to contact the Applicant.

3 CHAIRPERSON SORG: That's sort of what I
4 was thinking. Did OHE have any comment on this?

5 MS. NAGELHOUT: No you could go ahead and
6 hear the last case and put off deciding what to
7 do with this case until after you've heard the
8 last case and maybe she'll show up.

9 CHAIRPERSON SORG: Okay why don't we do
10 that? Mr. Moy can you call the next case then.

11 **Application No. 18193**

12 MR. MOY: That would be Application No.
13 18193 of Solomon Gramajo, pursuant to 11 DCMR
14 3103.2 for a variance from the use provisions to
15 allow the conversion. This is a cellar in the
16 first floor attic for storage of an existing one
17 family row dwelling for commercial use under
18 (Subsection 330.5) in the R-4 District at
19 premises 1324 Park Road, N.W. Property is
20 located in (Square 2842, Lot 36).

21 CHAIRPERSON SORG: Thank you Mr. Moy I
22 see the Applicants have come to the front can you

1 please introduce yourselves and stating your home
2 address for the record please.

3 MR. AGUILAR: George Aguilar 811 Sligo
4 Creek Parkway, Takoma Park, MD on behalf of
5 Solomon Gramajo who is here with me.

6 MR. GRAMAJO: I'm Solomon Gramajo I live
7 at 1356 Canter Street, N.W.

8 CHAIRPERSON SORG: Thank you very much.
9 I guess we can go ahead and start you can present
10 your cases.

11 MR. AGUILAR: Good afternoon this is for
12 approval for a use variance at 1324 Park Road,
13 N.W. The property itself it's kind of in an
14 unique situation where it's being sandwiched by
15 two commercial units which are the cellar and the
16 first floor to the east side we have a Laundromat
17 on the cellar and on the second floor we have an
18 office which has a spa salon and some other type
19 of offices. To the west side is a two floor
20 restaurant which currently has some other use
21 variance that was granted back in 2002. No the
22 situation that Mr. Gramajo is in the units

1 themselves are becoming un-rentable due to the
2 noise that is produced from these sources of the
3 businesses that are adjacent to him. That is the
4 main factor as to the submittal of this
5 application.

6 CHAIRPERSON SORG: Have you spoken to and
7 received the Office of Planning's report?

8 MR. AGUILAR: We have we received that
9 last week. We submitted the response to Ms.
10 Brown and Ms. Brown communicated to me that her
11 justification for an approval based on the
12 information that was provided as recent as
13 yesterday to her.

14 CHAIRPERSON SORG: Okay what I think
15 would be helpful is if you could do two things.
16 If you could walk through your opinion on the
17 three prongs of the variance test as well as we
18 received your additional information I think and
19 talk a little bit about it, go through that as
20 well.

21 MR. AGUILAR: Okay.

22 CHAIRPERSON SORG: Basically I can

1 clarify a little bit. Basically what you
2 testified so far is about the exceptional
3 situation of the property. Then if you can talk
4 a little bit about how that exceptional situation
5 causes you a practical difficulty in using the
6 property.

7 MR. AGUILAR: Basically as I stated
8 before the property itself is sandwiched between
9 two commercial units. To be more specific to the
10 east side the Laundromat all of their units their
11 washers and dryers are laid out on the west side
12 which puts it adjacent to the 1324 property. So
13 when those machines are in use you can actually
14 feel those machines going.

15 CHAIRPERSON SORG: Where are they vented?

16 MR. AGUILAR: I don't know I've not seen
17 any ventilation through the rear I have taken
18 many pictures of the property and not seen any
19 major ventilation. The only ventilation I see is
20 from the restaurant itself which I submitted some
21 pictures of it which you would be able to see
22 clearly there. The second one is the restaurant

1 to the right hand side, in-between the two
2 properties like half way through the rear there's
3 a little space walk that is sort of shared
4 between 1326 and 1324 which in the rear of the
5 house the kitchen itself and that's based on both
6 units both 1326 and 1324 on the second floor they
7 have windows so basically all the noise comes
8 through and when they drop beer bottles or
9 whatever all that noise is pretty audible. That
10 has been a serious concern. No let me clarify
11 that Mr. Gramajo pretty much neighbor wise is
12 pretty happy with the places themselves but the
13 fact of being on his financial part of being able
14 to rent these units have become an issue. That's
15 pretty much the biggest. Now the property itself
16 1324 Park Road is in a business district very
17 close even though it's zoned R-4 within 5
18 properties becomes a C2-A Zoning. You can say
19 probably about not less than 100 yards you can
20 find Giant which is almost a 50,000ft retail
21 houses, three floor parking garage. To the east
22 the fire engine is maybe less than 100ft. So as

1 far as when it comes to the impact on the
2 neighborhood it's more a commercial district. We
3 did assist to the meeting of the ANC which was
4 voted 10 to 0 in favor of us.

5 CHAIRPERSON SORG: Do you know if the ANC
6 was planning to submit a letter to testify to
7 that.

8 MR. AGUILAR: I had sent an email to Mr.
9 Bill Brown I have not gotten a response yet. It
10 did take me awhile to get a hold of him just to
11 get on the agenda.

12 CHAIRPERSON SORG: Unfortunately we don't
13 have anything in our record from the ANC but
14 we'll take your testimony that you presented
15 there and they did vote in support.

16 MR. AGUILAR: Correct, that was done on
17 April 13th.

18 CHAIRPERSON SORG: Okay. So I want to
19 hear the first floor use and the basement use.
20 Can you tell me kind of on this block in this
21 area how many other properties have the first
22 floor and basement as residential, what

1 percentage maybe have as residential and as
2 commercial?

3 MR. AGUILAR: On this particular block we
4 have to the east 1324 is the restaurant and next
5 door they did a development for about 17
6 condominium units which under design they
7 actually did a survey, smart thing to do, they
8 put the actual garage entrance to the rear
9 parking it's adjacent to the (inaudible) in other
10 words to eliminate any possible future noise from
11 them they actually did the garage entrance on the
12 lower level to the rear of those units. Then
13 that is followed by an alley followed by the
14 firehouse engine then it is followed by about
15 four residential units and then there is the
16 commercial unit of a dry cleaning business and
17 then there is the park triangle 7 story building
18 which houses all retail from Citi Bank to Frozen
19 Yo to T-Mobile. Those are within feet from the
20 property itself.

21 CHAIRPERSON SORG: Okay thank you. So in
22 regards to the time period that the units have

1 been vacant has the owner been trying to lease
2 these spaces since, it looks like the first level
3 you said in your statement has been since 1999
4 and it's not been occupied since then?

5 MR. AGUILAR: It's not been occupied
6 since then, he is aware of the problems and its
7 more problems to bring somebody in.

8 CHAIRPERSON SORG: And have there been
9 efforts to try and lease these spaces since then
10 or recently.

11 MR. AGUILAR: I don't want to say
12 effortless because he could get it rented and
13 then he would have the issue of people just
14 walking out with more issues than he would have
15 brought in. As we did also on the suggestion,
16 recommendation of the OP we had an estimate done
17 for noise reduction of the property itself which
18 became to a very large sum to be able to compete
19 that and with that they also explained it was not
20 going to be guaranteed that was going to
21 eliminate all the noise from these two units.

22 CHAIRPERSON SORG: So other Board Members

1 have questions for the Applicant?

2 MR. SELFRIDGE: Thank you Madam Chair.
3 Have you talked to the people at the Laundromat
4 about the noise?

5 MR. AGUILAR: We have an there's really
6 not much they can do. All they can say is I'm
7 sorry.

8 MR. SELFRIDGE: The first floor units
9 were rented through 2006 is that correct?

10 MR. AGUILAR: The first correct.

11 MR. SELFRIDGE: So it seems like you were
12 able to rent those out, what was the rent of
13 those units?

14 MR. AGUILAR: No the actual, the biggest
15 difference in that is going to be the type of
16 tenant being sought after in that area it's a
17 little different from five years ago.

18 MR. SELFRIDGE: What does that mean?

19 MR. AGUILAR: Meaning that the type of
20 person that was living there before could deal
21 with the noise. Today's market cannot, I'm not
22 sure if that makes any sense.

1 MR. SELFRIDGE: So how many people did
2 you move in that moved out?

3 MR. AGUILAR: Back in 06 there was one
4 person living there for about 4 to 6 months.

5 MR. SELFRIDGE: So one person has lived
6 there during that time period. Have you talked
7 to the restaurant about moving their trash it
8 doesn't look like it's in a great spot?

9 MR. AGUILAR: Well the property
10 themselves are landlocked from the rear so
11 there's really no point for them to take their
12 trash all the way to the rear.

13 MR. SELFRIDGE: Where does the trash get
14 picked up?

15 MR. AGUILAR: The front.

16 MR. SELFRIDGE: They've got commercial
17 service right?

18 MR. AGUILAR: Yes.

19 MR. SELFRIDGE: So is there an alley.
20 You're saying there's no alley so it all has to
21 go to the front.

22 MR. AGUILAR: So in between the space

1 that you see there in the pictures they used to
2 have the trash bins there was at one point a
3 serious rodent issue which was minimized when Mr.
4 Gramajo built a brick wall in between them.

5 MR. SELFRIDGE: That helped to some
6 degree in terms of blocking the trash and keeps
7 the rats from coming over. That's a terrible
8 spot for the trash.

9 MR. AGUILAR: That little room in the
10 back is the actual kitchen.

11 MR. SELFRIDGE: So that's the kitchen so
12 it goes all the way back, they put the trash
13 there and then somebody comes through the
14 building takes the trash out the front and dumps
15 it in front?

16 MR. AGUILAR: Correct.

17 MR. SELFRIDGE: Then you probably covered
18 this but I'm just trying to get oriented a little
19 bit. What is to the, if the Laundromat is to the
20 right it's a restaurant to the left is that what
21 you're saying?

22 MR. AGUILAR: Facing it would be to the

1 right to the restaurant and to the left would be
2 the Laundromat.

3 MR. SELFRIDGE: How come you think if you
4 can't rent the first floor because of the noise
5 that you can rent the second floor because of the
6 noise.

7 MR. AGUILAR: The second floor would
8 actually be it would be like the third floor.

9 MR. SELFRIDGE: It's one floor above. So
10 you're asking for commercial use on the first and
11 second floor, the cellar and the first floor.

12 MR. AGUILAR: About 26 inches below
13 grade.

14 MR. SELFRIDGE: It's adjacent to the
15 trash.

16 MR. AGUILAR: Correct.

17 MR. SELFRIDGE: So on what you were
18 calling the second floor you feel like even
19 though it's one floor above that the noise and
20 trash are not an impediment to leasing those
21 units?

22 MR. AGUILAR: It is it's still a little

1 bit of an issue but not as big as being almost
2 close to the actual...

3 MR. SELFRIDGE: So being a floor down
4 makes all the difference I the world. Have you
5 talked to the neighbors about screening their
6 trash?

7 MR. AGUILAR: No the only conversation
8 that he has had okay so he has spoken with the
9 restaurant and their issue is that the way they
10 built the kitchen they left no rear exit so the
11 only exit that they have because they felt
12 comfortable coming around through the front door
13 until Mr. Gramajo actually blocked the waiter.

14 MR. SELFRIDGE: But you can still put up
15 screening so you visually could not see the trash
16 cans, they could in theory right. We're talking
17 about seeing the trash on the first floor; you're
18 going to hear beer bottles regardless. I've
19 slept in Adams Morgan before, I slept behind
20 Felix it's loud in an apartment I've slept. So I
21 know that's very loud and you probably hear it
22 many houses over. But it seems like with some

1 screening you could really mitigate that problem
2 on what you're calling the first level is that
3 not true?

4 MR. AGUILAR: That is true and that will
5 become more a neighbor expense which would
6 become, and even doing that I mean the visible
7 would probably be a nicer view of screening
8 versus the trash itself but the noise itself.

9 MR. SELFRIDGE: You never get rid of the
10 noise. That's all my questions thank you.

11 MR. JORDAN: My question would go to how
12 were you marketing the property for possible
13 tenants for residential?

14 MR. AGUILAR: I stated before the
15 property has not been marketed just due to the
16 fact that he's aware of the issue and it's
17 bringing a tenant and letting them know look
18 there's plenty of noise here. It doesn't make
19 any point. Or bringing the tenant in and not
20 making them aware or the situation then it
21 becomes a bigger issue. So when was the last
22 time that a potential tenant was brought to the

1 property that did not rent?

2 MR. AGUILAR: That would be 2006.

3 MR. JORDAN: So why are you asking for
4 this relief at this time and five years have
5 passed since you've actually tried to rent this
6 facility and had a potential tenant there?

7 MR. AGUILAR: Basically he has been
8 dealing with his wife's medical issues one and
9 the second issue has been that back in 2006 that
10 whole area within the past 4 or 5 years has
11 changed a lot and the vacancy is starting to look
12 you can pretty much see compared to the rest of
13 the neighborhood. His main reason is that he has
14 been dealing mainly with his wife's medical
15 issues. So for the past five years sir his wife
16 is with breast cancer so for the past five years
17 paid more attention to her than the property
18 itself. So now that she's over her five year
19 stage that's when he started to be a little bit
20 more attentive to the property itself.

21 MR. JORDAN: Could he have a potential
22 tenant now?

1 MR. AGUILAR: There are potential tenants
2 that have been inquiring for the past 2 or 3
3 years yes.

4 MR. JORDAN: They're commercial tenants?

5 MR. AGUILAR: They're commercial tenants
6 yes.

7 CHAIRPERSON SORG: No additional
8 questions from the Board. Oh go ahead.

9 MR. SELFRIDGE: Does anybody live on the
10 second or third floor right now?

11 MR. AGUILAR: Yes.

12 CHAIRPERSON SORG: Thank you Mr.
13 Selfridge. Let's go to the Office of Planning
14 now.

15 MS. BROWN-ROBERTS: Good afternoon Madam
16 Chair, Members of the Board I'm Maxine Brown-
17 Roberts representing the Office of Planning. I
18 think at first I'll address the information that
19 we requested from the Applicant and say that they
20 have addressed them. We had asked about the time
21 period and he did give the information regarding
22 the first floor and the basement. We talked

1 about evidence to rent to the units and has he
2 has stated that has not been done. Then there
3 is, we also asked about the rental income lost
4 from both and he has estimated it to be about
5 \$100,000 since 1999 and 2006. Then regarding the
6 estimates for the noise attenuation the estimate
7 that he got was for \$27,000 and also stated that
8 it was not sure that even with this that all the
9 noise issues would be addressed. It's a use
10 variance and therefore the Applicant has to
11 demonstrate that there's a hardship. The
12 property is unique due to an exceptional
13 situation or condition in that it is between;
14 it's located between two active commercial uses
15 and uses that are very noisy also. The hardship
16 that has been created I think the most convincing
17 of them was the noise and the vibrations from the
18 washer that are located in the basement of 1322
19 Park Road and then the associated noise from the
20 garbage disposal on 1326 Park Road. Therefore we
21 think that, also the hours of operation of both
22 businesses seem to be pretty extensive for just

1 about every day of the week so we think that he
2 has demonstrated the undue hardship by the owner.
3 Can the requested relief be granted without
4 substantial detriment to the public good? We do
5 agree that this area has small neighborhood
6 retail uses throughout even within the
7 residential zone especially in the R-4. We think
8 that the proposed use would not be detrimental to
9 public good or substantial impair the intent and
10 integrity of the plan. We also looked at the
11 comprehensive plan to look closer to what they
12 were recommending and this area although not
13 within the area that is designated for commercial
14 use the plan identifies areas that have these
15 commercial uses, within the residential area.
16 Therefore the Office of Planning recommends
17 approval of the requested variance. Thank you
18 Madam Chair I will take any questions.

19 CHAIRPERSON SORG: Thank you very much.
20 Do Board Members have questions for the Office of
21 Planning?

22 MR. SELFRIDGE: My question was about the

1 Laundromat whether it was legal or not, if it was
2 a licensed Laundromat?

3 MS. BROWN-ROBERTS: From the research
4 that we did, we did not find any variances or any
5 permits actually for the Laundromat.

6 MR. SELFRIDGE: As a follow up on that do
7 you think the legality or lack thereof the
8 Laundromat has bearing on how you view it in
9 terms of the exceptional situation.

10 MS. BROWN-ROBERTS: No I mean that's
11 still in use unless we report them. It could just
12 push them to come to an actual variance also.
13 There are no guarantees that it will go away.

14 MR. SELFRIDGE: The Laundromat is not by
15 right they would have to come to the Board and
16 get approval and permission to operate there.

17 CHAIRPERSON SORG: Can you please in your
18 report you talk about 14th Street Plan that's
19 recently done. Can you talk about what kind of
20 retail and commercial uses might be possible
21 should this be available in this location or what
22 is foreseen?

1 MS. BROWN-ROBERTS: I think that those
2 uses again which I think this request falls in
3 that we're talking about small neighborhood, you
4 know retail uses. I think the proposed use some
5 commercial use would be a neighborhood use. He
6 says he has people have been requesting for about
7 a restaurant. So the space on this building is
8 even smaller than at 1326 Park Road so I don't
9 see that this would be some sort of destination
10 restaurant there. Even so if it was again you
11 know it's near to the Metro Station. None of
12 these three buildings here have parking. I would
13 think that just because of the size it would not
14 be a very large retail use there.

15 CHAIRPERSON SORG: Thank you very much.

16 MR. JORDAN: So we believe that the
17 Laundromat isn't properly operating?

18 MS. BROWN-ROBERTS: As far as my
19 investigation has gone.

20 MR. JORDAN: Did I hear you right saying
21 you didn't refer it for enforcement.

22 MS. BROWN-ROBERTS: I'm just saying that

1 I think the question was asked if this was a non-
2 permitted use that how could we get it
3 conforming.

4 MR. JORDAN: I'm just asking the question
5 did we do that.

6 MS. BROWN-ROBERTS: That's up to the
7 Board, that's not my recommendation.

8 MR. JORDAN: You don't know if it's been
9 referred. I think if the use issue is affecting
10 this use issue and the request is being made here
11 so I think it becomes very circular. I would
12 think that would be something we'd do?

13 MS. BROWN-ROBERTS: I don't know I would
14 refer to OAG to make that determination if
15 there's something you can do I don't know.

16 CHAIRPERSON SORG: Any additional
17 questions for Office of Planning? Does the
18 Applicant have any questions for the Office of
19 Planning? No okay, thank you very much. Now we
20 will go forward and see if there are any persons
21 or individuals in the audience in support or in
22 opposition? Seeing no one in the audience we

1 will move on to the ANC. Seeing no one in the
2 audience and so we don't see anyone present from
3 ANC 1-A. We also have not received an ANC report
4 but the Applicant has testified that they
5 presented in front of the ANC on April 13, 2011,
6 and had testified that the ANC voted 10 to 0 in
7 support of the application. We will note this in
8 our record but unfortunately that vote will not
9 be given great weight at this time. Are there
10 any closing statements from the Applicant?

11 Nothing okay thank you. Okay thank you very much
12 and at this time we will close the public hearing
13 and the record in this case and we want to
14 schedule for a decision Mr. Moy. Do we have
15 space on May 17th?

16 MR. MOY: I was going to say Madam Chair
17 that the decision cases are the first Tuesdays of
18 each month. Certainly...

19 CHAIRPERSON SORG: No I'm asking you when
20 our next decision meeting is.

21 MR. MOY: Oh we have a scheduled decision
22 meeting on June 7th and of course the other one is

1 next week on May 17th?

2 CHAIRPERSON SORG: Okay thank you Mr. Moy
3 what we'll do is we'll put this for decision on
4 June 7th in the morning. At the decision meetings
5 you're welcome to attend but the Board does not
6 take any testimony. What we'll do is we'll come
7 up and deliberate and vote on the case you can
8 also watch it on the webcast if you prefer. Okay
9 thank you very much.

10 MR. MOY: Madam Chair returning to the
11 second case in the afternoon which would be
12 Application No. 18161 this is the application of
13 Valeri A. Byrd. Just for the Boards knowledge
14 during the interim I personally called the agent
15 for the application and left a voice message
16 apprising them of the situation and have had no
17 response since then. That was about half an hour
18 ago.

19 CHAIRPERSON SORG: Thank you Mr. Moy I
20 think seeing as this case has been postponed a
21 couple of times before that was based on other
22 things that were going on and there are other

1 applications with this Applicant. So let's
2 postpone this case one more time and let the
3 Applicant know that it's their responsibility to
4 prosecute this case should they want to.

5 MR. MOY: With respect to possible days
6 Madam Chair to assist you. June 21st Mr.
7 Selfridge is sitting but that's a very heavy
8 Docket that day with four cases in the morning
9 and now four cases in the afternoon. Other than
10 that the other available days would be either
11 July 19th or July 26th.

12 CHAIRPERSON SORG: Let's look at how
13 about June 14th in the afternoon?

14 MR. MOY: That's possible you can make it
15 the fourth case in the afternoon on June 14th.

16 CHAIRPERSON SORG: It looks pretty heavy
17 actually maybe we could try July 12th in the
18 afternoon?

19 MR. MOY: Okay so we're going to schedule
20 it for July 12th in the afternoon?

21 CHAIRPERSON SORG: Yes please. Alright
22 so this closes our public hearing for this

1 afternoon and before we go I will read something.

2 As Chairperson of the Board of Zoning and
3 Adjustments for the District of Columbia and in
4 accordance with Section 405 of the opening
5 meetings amendment act of 2010 I move that the
6 BZA hold a closed meeting via telephone
7 conference on May 16th for the purpose of seeking
8 legal advice from our counsel on the following
9 cases scheduled for upcoming decision.

10 Case No. 17907 Embassy of Spain.

11 Case No. 18220 Stewart and Wilma Bernstein.

12 Case No. 17521B 601 to 645 H Street, LLC.

13 Case No. 17913 Gonzaga College High School.

14 Case No. 18199 Church of Jesus Christ.

15 Case No. 18201 Ingomar Associates.

16 Is there a second?

17 MR. HINKLE: Second.

18 CHAIRPERSON SORG: Will the Secretary
19 please take a roll call vote on the motion before
20 us now that has been seconded.

21 MR. MOY: Yes Madam Chair when I take the
22 roll call vote I'll say the members name and the

1 members can respond by yes or no, yay or nay. Mr.
2 Selfridge.

3 MR. SELFRIDGE: Yay.

4 MR. MOY: Mr. Jordan.

5 MR. JORDAN: Yay.

6 MR. MOY: Ms. Sorg.

7 MS. SORG: Yay.

8 MR. MOY: Mr. Hinkle.

9 MR. HINKLE: Yay.

10 MR. MOY: Motion carries Madam Chair.

11 CHAIRPERSON SORG: As it appears that the
12 motion has passed I hereby give notice that the
13 BZA will hold this aforementioned closed meeting
14 via telephone conference. Pursuant to the Open
15 Meetings Amendment Act of 2010 notice will also
16 be posted in the Office of Zoning electronic
17 reading room, placed on the Office of Zoning's
18 electronic calendar on its website and published
19 in the District of Columbia Register in as timely
20 a manner as practical.

21 MR. MOY: Very good thank you Madam
22 Chair.

1 CHAIRPERSON SORG: Thank you very much it
2 appears we are adjourned.
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